

182. Despite these improvements, AT&T claims that BellSouth's change management plan does not provide adequate information to competitive carriers.⁶⁷⁷ AT&T claims that BellSouth denies competitive LECs information on how much capacity each pending request will consume, the changes in the releases that BellSouth has scheduled for implementation in the remainder of 2002, and the information necessary for competitive LECs to compare projected and actual release capacity.⁶⁷⁸ In direct contradiction to AT&T's claims, BellSouth argues that it has agreed to provide competitive LECs with additional information concerning future change requests and their capacity so that competitive LECs can prioritize change requests more efficiently.⁶⁷⁹ We find that, overall, BellSouth's change management plan is sufficient for checklist compliance. Specifically, we find that BellSouth is providing competitive LECs with sufficient information to be able to make informed decisions regarding prioritization of proposed systems changes.⁶⁸⁰ In addition, BellSouth is providing more information to competitive LECs than at the time we approved the Georgia/Louisiana application.⁶⁸¹ Moreover, although we do not rely upon these actions for our decision, state commissions continue to oversee improvements to BellSouth's change management process.⁶⁸² Most notably, BellSouth and competitive LECs are working collaboratively to enhance BellSouth's CCP under the auspices of

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[competitive] LEC personnel. Internal BellSouth process changes (either software or procedural) unique to the [competitive] LEC wholesale environment are competitive LEC affecting." BellSouth Stacy Aff. at para. 85, Exh. WNS-13 (CCP at 79).

⁶⁷⁶ Department of Justice Evaluation at 8; WorldCom Comments at 1.

⁶⁷⁷ AT&T Bradbury/Norris Decl. at para. 26.

⁶⁷⁸ *Id.* According to BellSouth, capacity is measured in "units." Each unit represents 100 hours of programmer time. BellSouth routinely provides software programming information to competitive LECs in these units under CCP requirements. For example, BellSouth publishes projected and historical information on the number of units necessary to implement software changes. Letter from Glenn T. Reynolds, Vice President – Federal Regulatory, BellSouth, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-150 at 6 (filed Aug. 16, 2002) (BellSouth August 16 CCP *Ex Parte* Letter). BellSouth has agreed to provide to the competitive LECs information on BellSouth's legacy system releases via the CCP website, all BellSouth maintenance release information via the CCP Change Control Release Schedule, and is now posting all change requests to the Flagship Feature Release Schedule for competitive LEC's use. BellSouth Stacy Reply Aff. at para. 7. In addition, BellSouth has provided the 2002 and 2003 capacity information to the competitive LECs, and will continue to provide capacity reports on a quarterly basis. BellSouth Stacy Reply Aff. at para. 25. BellSouth also publishes a quarterly tracking report, which summarizes the status of change requests. *Id.*; see also Letter from Kathleen B. Levitz, Vice President – Federal Regulatory, BellSouth, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-150 at 2 (filed Aug. 30, 2002) (BellSouth August 30 *Ex Parte* Letter).

⁶⁷⁹ BellSouth Stacy Aff. at paras. 158-59; BellSouth Stacy Reply Aff. at para. 7.

⁶⁸⁰ *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9128, para. 193.

⁶⁸¹ BellSouth Stacy Aff. at paras. 82, 89.

⁶⁸² BellSouth Stacy Aff. at para. 81; see also Alabama Commission Comments at 166-70; Kentucky Commission Comments at 27-29; Mississippi Commission Comments at 14-16; North Carolina Commission Comments at 154-57; South Carolina Commission Comments at 3.

the Georgia and Florida Commissions.⁶⁸³ The change management process is designed, by nature, as an evolving one,⁶⁸⁴ and we are confident that it is continuing to improve, as evidenced by the changes agreed to by BellSouth, CCP participants, and state commissions.⁶⁸⁵

183. *Competing Carrier Input.* AT&T alleges that BellSouth does not allow competing carriers adequate input into the change management process.⁶⁸⁶ Specifically, AT&T claims that BellSouth has complete control over the implementation of competitive LEC change requests.⁶⁸⁷ As an initial matter, we find that the version of BellSouth's CCP included with this application – Version 3.1, filed May 29, 2002 – was, like the earlier versions, developed as the result of a collaborative process between competitive LECs and BellSouth.⁶⁸⁸ From April through June 2002, 29 meetings related to the CCP were held between BellSouth and competitive LECs.⁶⁸⁹ Therefore, we believe the record indicates consistent BellSouth collaboration with competitive LECs.

184. To address concerns raised in the KPMG third-party test in Florida, BellSouth proposed the concept of a “50/50 plan” on February 12, 2002.⁶⁹⁰ After the May 2, 2002 CCP meeting, BellSouth proceeded to implement the 50/50 plan.⁶⁹¹ The 50/50 plan, described in

⁶⁸³ BellSouth Stacy Aff. at para. 81; BellSouth Stacy Reply Aff. at para. 24. During industry workshops in Georgia PSC Docket No. 7892-U, the competitive LECs requested, and the Georgia Commission agreed to, the establishment of a process by which further changes to the CCP could be addressed. This process has two phases: the first, which is nearly complete, involves the consideration of additional performance measures related to the CCP, while the second phase involves changes to the CCP itself. *Id.* The Georgia and Florida Commissions have ordered or are considering the implementation of metrics measuring change management performance. Letter from Kathleen B. Levitz, Vice President – Federal Regulatory, BellSouth, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-150 at 1-2 (filed Aug. 9, 2002) (BellSouth August 9 CCP *Ex Parte* Letter).

⁶⁸⁴ *SWBT Texas Order*, 15 FCC Rcd at 18410, para. 117 (stating that the Commission does not expect any change management process to remain static.)

⁶⁸⁵ *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9119-20, para. 182.

⁶⁸⁶ AT&T Bradbury/Norris Decl. at paras. 18-20.

⁶⁸⁷ *Id.* at para. 19.

⁶⁸⁸ BellSouth Stacy Aff. at para. 89; BellSouth Stacy Reply Aff. at para. 16.

⁶⁸⁹ *Id.* at para. 17.

⁶⁹⁰ See *id.* at para. 30; *Consideration of BellSouth Telecommunications, Inc.'s Entry into InterLATA Services Pursuant to Section 271 of the Federal Telecommunications Act of 1996*, Docket No. 960786B-TL, and *Petition of Competitive Carriers for Commission Action To Support Local Competition in BellSouth Telecommunications, Inc.'s Service Territory*, Docket No. 981834-TP, *Order Requiring Implementation of End-to-End Process Flow, Draft Version 2.1*, Order No. PSC-02-1034-FOF-TP at 7 (July 30, 2002) (Florida 50/50 Plan Order). The Florida Commission also stated that it intends to monitor BellSouth's change management process during the next year. *Id.* at 7.

⁶⁹¹ See AT&T Bradbury/Norris Decl. at para. 20; see also Letter from Kathleen B. Levitz, Vice President – Federal Regulatory BellSouth, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket (continued....)

detail in the proprietary *End-to-End Process Flow, Version 2.1* document, is designed to allocate software release capacity between BellSouth and competitive LECs.⁶⁹² Generally speaking, competing carriers that wish to introduce a change to BellSouth's OSS can submit a change request to the CCP.⁶⁹³ After the BellSouth change control manager validates the change,⁶⁹⁴ competitive LECs jointly prioritize change requests using information BellSouth provides about the approximate size of each change request feature and estimates of available capacity in future releases.⁶⁹⁵ Under the process reviewed in the *BellSouth Georgia/Louisiana Order*, BellSouth then internally reviews the prioritization and sequences change requests beginning with the top priority request.⁶⁹⁶ Under the new 50/50 release plan, BellSouth will have its own releases and competitive LECs will jointly have their own releases.⁶⁹⁷ The plan first requires implementation of all regulatory mandates, all needed industry standard updates and all scheduled repairs to fix defects.⁶⁹⁸ After those changes are implemented, competitive LECs and BellSouth share equally

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No. 02-35 (filed May 14, 2002) (dividing releases according to BellSouth production and competitive LEC production) (BellSouth May 14 *Ex Parte* Letter). BellSouth began using the plan internally and to provide information to competitive LECs prior to the filing of this application. BellSouth Stacy Aff. at para. 170, Exh. 37 at 7-8. The Florida Commission ordered the adoption of the 50/50 plan on July 30, 2002, to address Exception 88 in the KPMG's June 21, 2002 Draft Final Operations Support Systems Report. Florida 50/50 Plan Order at 7-8.

⁶⁹² BellSouth Stacy Reply Aff. at para. 29.

⁶⁹³ See BellSouth Stacy Aff. at para. 85, Exh. WNS-13 (CCP at 33).

⁶⁹⁴ BellSouth will validate the change request unless the change goes beyond BellSouth's obligations under Commission orders, is not technically feasible, or requires BellSouth to make a substantial investment for a limited competing carrier benefit. See BellSouth Stacy Aff. at para. 85, Exh. WNS-13 (CCP at 33) (describing the process flow for request types 2-5). We note that two new performance metrics will measure whether BellSouth performs this step within the 10-day interval (CM-7) and will measure how many requests are denied by BellSouth for any of the reasons stated above (CM-8). BellSouth August 9 CCP *Ex Parte* Letter at 1-2.

⁶⁹⁵ In preparation for the monthly meeting presentation, BellSouth has five to seven business days to prepare a preliminary assessment of the size and scope of the proposed change. BellSouth Stacy Aff. at para. 85, Exh. WNS-13 (CCP at 37-39) (steps four and five of the process flow for request types 2-5) and paras. 85, Exh. WNS-13 (CCP at 61-64) (detailing the prioritization process). We note that BellSouth recently has provided competitive LECs with available capacity and a release schedule for each release planned for 2003, which will provide competitive LECs an additional tool to more efficiently prioritize change requests.

⁶⁹⁶ BellSouth Stacy Aff. at para. 85, Exh. WNS-13 (CCP at 39) (step seven of the process flow for request types 2-5) and para. 85, Exh. WNS-13 (CCP at 64); Letter from Kathleen B. Levitz, Vice President – Federal Regulatory, BellSouth, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-150 at 1-2 (filed Aug. 21, 2002) (BellSouth August 21 *Ex Parte* Letter). BellSouth adequately explains its internal processes to competing carriers through documentation and discussions at CCP meetings. BellSouth Stacy Aff. at para. 86; BellSouth Stacy Reply Aff. at para. 8. Also, as noted above, competing carriers have an opportunity for input at release package meetings.

⁶⁹⁷ BellSouth Stacy Aff. at para. 167; BellSouth Stacy Reply Aff. at para. 9.

⁶⁹⁸ BellSouth July 16 *Ex Parte* Letter at Att. 3, p. 6. The CCP is designed to accommodate six different categories of changes: Type 1 requests are for system outages; Type 2 requests are for changes mandated by regulatory authorities; Type 3 changes are for updating interfaces to an industry standard; Type 4 requests are (continued....)

the remaining release capacity for the year.⁶⁹⁹ BellSouth schedules its change requests and shows competitive LECs the changes it had initiated and intended to implement.⁷⁰⁰ Likewise, competitive LECs prioritize their change requests, and these are slotted for implementation in competitive LEC releases.⁷⁰¹ BellSouth and competitive LECs each have the right to prioritize the features in their releases.⁷⁰²

185. We disagree with AT&T's characterization of BellSouth's 50/50 plan as "patently inadequate."⁷⁰³ AT&T claims that the 50/50 plan arbitrarily divides releases between competitive LECs and BellSouth, instead of prioritizing and implementing both BellSouth and competitive LEC change requests as needed.⁷⁰⁴ Covad also claims that the current change control process is entirely within the control of BellSouth.⁷⁰⁵ We find that BellSouth's proposal allows competitive LECs at least the same level of control over the prioritization of their change requests than they had under previous versions of BellSouth's prioritization process, including

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BellSouth initiated changes; Type 5 requests are competitive LEC initiated changes; and Type 6 requests are to correct system defects. BellSouth Stacy Aff. at para. 85, Exh. WNS-13 (CCP at 23-25); BellSouth Stacy Aff. at paras. 136-38. The process for each type is well defined, including timeliness intervals, and an expedited procedure is also available for all Types 2 through 5 change requests. BellSouth Stacy Aff. at para. 85, Exh. WNS-13 (CCP at 26-60).

⁶⁹⁹ BellSouth July 16 *Ex Parte* Letter at Att. 3, p. 6.

⁷⁰⁰ *Id.*

⁷⁰¹ *Id.*

⁷⁰² BellSouth Stacy Aff. at para. 167; *see also* BellSouth August 21 *Ex Parte* Letter at 1-2. We note that WorldCom has alleged that BellSouth is not following its new processes to implement prioritized change requests. Letter from Keith L. Seat, Senior Counsel – Federal Advocacy, World Com, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-150 at 1-2 (filed Sept. 12, 2002) (WorldCom September 12 *Ex Parte* Letter). BellSouth proposed on August 30, 2002, that competitive LECs change their prioritization schedule. *Id.*; *see also* Letter from Kathleen B. Levitz, Vice President – Federal Regulatory, BellSouth, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-150 at Att. 1. (filed Sept. 4, 2002) (BellSouth September 4 *Ex Parte* Letter). However, because of our freeze frame rule, we decline to consider these allegations in this application. *See Updated Filing Requirements for Bell Operating Company Applications Under Section 271 of the Communications Act*, Public Notice, 16 FCC Rcd 20948, 20950-51 (2001) (271 Filing Requirements).

⁷⁰³ AT&T Comments at 9. AT&T also claims that BellSouth refuses to consider any change to the CCP that would alter its current, exclusive control over the prioritization, implementation, timing and sequencing of change requests. AT&T Bradbury/Norris Decl. at para. 18. We believe that BellSouth's proposal establishes that this claim is inaccurate. Furthermore, as AT&T notes, disputes regarding the change management process are now being considered by the Georgia Commission. AT&T Bradbury/Norris Decl. at paras. 22-24. As the CCP calls for state commission resolution of disputes between the parties, the Georgia Commission's consideration of outstanding issues demonstrates that the process is working in that respect. BellSouth Stacy Reply Aff. at paras. 16, 24-28.

⁷⁰⁴ AT&T Bradbury/Norris Decl. at para. 19; *see also* Florida 50/50 Plan Order at 6.

⁷⁰⁵ Covad Comments at 21.

the one approved in the *BellSouth Georgia/Louisiana Order*.⁷⁰⁶ We also reject AT&T's assertion that BellSouth's control over BellSouth releases and over the total amount of capacity available for all releases means that carriers do not have adequate input into the change management process.⁷⁰⁷ We have only required BOCs to provide competitive LECs "opportunities for meaningful input" in the change management process, not to relinquish control over their systems or to provide unlimited resources to implement all change requests.⁷⁰⁸ BellSouth's reasonable limitations do not hinder the competitive LECs' ability to provide sufficient input. Furthermore, BellSouth has recently expanded the definition of "CLEC-affecting" in a manner that will increase the amount of information BellSouth provides to competitive LECs regarding future releases.⁷⁰⁹ Overall, we find that BellSouth's plan will ensure that competitive LECs are informed about the effects of systems changes. As the Department of Justice notes, KPMG's *Draft Final Report* states that the BellSouth proposals to increase competitive LEC participation in the prioritization of change requests would, if implemented, address the concerns identified in the exception.⁷¹⁰ We also take comfort in the fact that BellSouth appears to be continuing to improve its change management process under the auspices of the Georgia and Florida Commissions,⁷¹¹ and we expect BellSouth to continue to collaborate with competitive LECs.⁷¹²

186. *Dispute Resolution.* As we found in the *BellSouth Georgia/Louisiana Order*, we find that the BellSouth CCP "defines a procedure for the timely resolution of change management disputes."⁷¹³ Since the *BellSouth Georgia/Louisiana Order*, BellSouth proposed that the escalation process begin and end at higher management levels than was provided for in

⁷⁰⁶ *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9120-21 & n.689, para. 183.

⁷⁰⁷ *Id.*

⁷⁰⁸ See *Bell Atlantic New York Order*, 15 FCC Rcd at 4001-02, 4011-12, paras. 106, 124; *SWBT Texas Order*, 15 FCC Rcd 18406, para. 111; *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9128-28, para. 194.

⁷⁰⁹ BellSouth Stacy Aff. at para. 157.

⁷¹⁰ Department of Justice Evaluation at 9; KPMG Draft Final Staff Report at RMI 14-19.

⁷¹¹ In addition to Florida's adoption of BellSouth's 50/50 plan, we note that the Georgia Commission is also considering adoption of this plan. AT&T Bradbury/Norris Decl. at para. 23. As change management is a region-wide process, changes made by one state commission have the potential to affect the entire process.

⁷¹² We recognize that some discrete steps in the change management process may necessarily involve less collaboration than others. However, we note that effective change management processes require a good working relationship between BOCs and competing carriers and that efforts to develop more transparent processes enhance the usefulness of the process for competing carriers as well as BOCs. In fact, through a collaborative effort in the CCP actively monitored by the Georgia Commission, participants are negotiating improvements to the feature sizing and resource allocation elements of the CCP and are considering adding intervals for implementing feature requests. These steps could improve the transparency of software release decisions. We encourage BellSouth to continue to accommodate competitive LEC requests to improve the transparency and effectiveness of its CCP.

⁷¹³ *SWBT Texas Order*, 15 FCC Rcd at 18404, para. 108; *BellSouth Georgia/Louisiana Order* at 9123, para. 186; BellSouth Stacy Aff. at para. 85, Exh. WNS-13 (CCP at 59-63); see also BellSouth Stacy Aff. at paras. 92-97.

the CCP.⁷¹⁴ As a result, if necessary, disputes will now be escalated to BellSouth's Network Vice President for Wholesale Operations.⁷¹⁵

187. *Testing Environment.* We find that BellSouth's testing environments allow competing carriers the means to successfully adapt their systems to changes in BellSouth's OSS. The same testing processes and systems are used to perform testing in the five states in this application as were reviewed and approved in Georgia and Louisiana, and no party raises an issue in this proceeding that causes us to change this determination. BellSouth's "original" testing environment is used to allow competing carriers to shift from a manual process to an electronic interface, or when upgrading to a new industry standard.⁷¹⁶ BellSouth offers its more recently developed [Competitive LEC] Application Verification Environment (CAVE) test environment to test the ordering and pre-ordering functions of upgrades to the EDI, TAG, and LENS interfaces.⁷¹⁷ We are thus able to conclude, for the same reasons we did in the *BellSouth Georgia/Louisiana Order*, that BellSouth's testing processes are adequate.

188. AT&T argues that the number of defects contained in BellSouth's latest software release indicates that BellSouth's testing processes are either not adequate or not being properly followed.⁷¹⁸ Although we recognize that BellSouth has experienced a number of defects in its software releases,⁷¹⁹ commenters have not provided the evidence necessary to demonstrate that these defects are a result of a failure by BellSouth to follow its testing procedures.⁷²⁰ Based on the evidence in the record, we also are not convinced that rejection is warranted based on AT&T's allegation that the CAVE test scenarios do not completely mirror what individual carriers typically order in the production environment.⁷²¹ The Commission has never required

⁷¹⁴ BellSouth Stacy Aff. at para. 97. The escalation will begin with "Operations Assistant Vice President" and end with "Network – Vice President." BellSouth Stacy Reply Aff. at para. 8. CCP participants agreed unanimously to this change as part of ballot 13, which was distributed on July 15, 2002, and BellSouth updated the CCP web site on July 29, 2002. *Id.* Before the competitive LECs voted, the extra escalation step was optional, not mandatory, for competitive LECs. *Id.*

⁷¹⁵ BellSouth Stacy Aff. at para. 97.

⁷¹⁶ *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9123 n.701; BellSouth Stacy Aff. at para. 99; BellSouth Stacy Reply Aff. at para. 94.

⁷¹⁷ *Id.* BellSouth has expanded CAVE testing opportunities for competitive LECs, expanded and formalized pre-release communications with competitive LECs concerning defects and has proposed a formal process for deferring implementation of a release due to defects, including a competitive LEC "go/no go" recommendation on release implementation. BellSouth August 16 CCP *Ex Parte* Letter at 6.

⁷¹⁸ AT&T Comments at 11 (stating that "[t]he Commission has already noted BellSouth's failure to comply with its own testing procedures and its resultant inability to complete software releases without numerous defects.>").

⁷¹⁹ For a discussion of BellSouth's software quality, see section IV.B.2.g.(b), *infra*.

⁷²⁰ Rather, most of the defects were the result of orders caught in the transition from Release 10.4 to Release 10.5. BellSouth Stacy Reply Aff. at para. 77.

⁷²¹ AT&T Bradbury/Norris Decl. at para. 57.

that test scenarios and actual production orders be identical.⁷²² BellSouth's CAVE testing scenarios are substantially similar to actual production orders. Moreover, BellSouth demonstrates that competitive carriers can acquire test orders different from those in the standard catalog to more closely match their production orders.⁷²³ We also note that CAVE provides testing for a wide variety of competitive LEC order types.⁷²⁴ Accordingly, we find these procedures give competing carriers a meaningful opportunity to compete.

189. Several developments give us additional comfort in this area. BellSouth states that it is in the process of expanding the number of test cases it uses during testing.⁷²⁵ Further, BellSouth has recently implemented a pre-release testing status report identifying unresolved defects,⁷²⁶ and is continuing to discuss improvements to the testing process on a collaborative basis with competitive carriers.⁷²⁷ We encourage BellSouth to continue to accept and consider, before deciding to implement a new software release, any input from competitive LECs regarding software problems they discover during testing.

190. *Documentation Adequacy.* We find that BellSouth provides documentation sufficient to allow competing carriers to design their systems in a manner that will allow them to communicate with BellSouth's relevant interfaces.⁷²⁸ BellSouth uses the same documentation processes and systems in the five states in this application as we reviewed and approved in

⁷²² *SWBT Texas Order*, 15 FCC Rcd at 18421-22, para. 138.

⁷²³ BellSouth Stacy Reply Aff. at para. 106.

⁷²⁴ AT&T claimed that when it tested BellSouth's parsed CSR functionality in April 2002 (three months after the functionality was implanted in commercial production), it received error messages because that functionality had not been implemented in CAVE. AT&T Comments at 11. BellSouth explained that its initial test plan with AT&T did not include testing of the parsed CSR functionality. BellSouth Stacy Aff. at para. 112. While AT&T's testing was in progress, modifications were made to AT&T's test plan to add parsed CSR testing. BellSouth Stacy Reply Aff. at para. 106. The parsed CSR functionality was operational in CAVE prior to implementation in the production environment. *Id.*

⁷²⁵ BellSouth August 16 CCP *Ex Parte* Letter at 5.

⁷²⁶ This report provides competitive LECs with information on defects/issues in the release. BellSouth will update this report on a daily basis until production implementation of the release. BellSouth Stacy Reply Aff. at para. 11. BellSouth is also conducting weekly conference calls during pre-release CAVE testing to provide the opportunity for comment and the exchange of information related to the testing. *Id.*

⁷²⁷ BellSouth states that the CCP participants are discussing the establishment of a testing profile; the elimination of the requirement for a formal test agreement; implementation of regression testing; and the implementation of a more defined defect management process. BellSouth Stacy Reply Aff. at para. 11. BellSouth also has agreed to draft change requests to allow competitive LECs to test in CAVE using their own data and to allow competitive LECs to test multiple versions of CAVE. *Id.* Additionally, BellSouth has proposed to CCP participants that competitive LECs that have tested in CAVE participate in a "go/no go" decision in which they would either recommend that a particular release go forward as scheduled, or that BellSouth defer implementation to a later date, depending upon the severity of the defects found during testing. *Id.* at para. 12.

⁷²⁸ *SWBT Texas Order*, 15 FCC Rcd at 18411, para. 119.

Georgia and Louisiana, and no party raises an issue in this proceeding that causes us to change this determination.⁷²⁹ In particular, BellSouth demonstrates that it makes available sufficiently detailed interface design specifications to offer competing carriers a meaningful opportunity to compete.⁷³⁰ BellSouth demonstrates compliance with its documentation responsibilities by showing satisfaction of the Georgia third-party test efforts to build an interface as well as demonstrating that competing carriers have a meaningful opportunity to compete.⁷³¹ Furthermore, numerous competitors are now using electronic interfaces for pre-ordering, ordering, and reporting troubles,⁷³² and the record does not indicate that BellSouth provides inadequate or discriminatory treatment to these competing carriers. Therefore, we find that BellSouth demonstrates that it provides efficient competitors a meaningful opportunity to compete by enabling them to understand how to implement and use all of the OSS functions available to them.

(b) Adherence to the Change Management Process

191. *Accepting Change Requests.* BellSouth demonstrates that it validates change requests for acceptance into the process in a timely manner and in accordance with the 10-day interval specified by the CCP. From March through June 2002, BellSouth met this interval for 10 out of 13 requests.⁷³³ We note that BellSouth has agreed to implement a new metric (CM-7) that will measure BellSouth's adherence to the 10-day CCP deadline.⁷³⁴ In addition, BellSouth agreed to another metric (CM-8) that measures how many change requests are denied by BellSouth for any of the reasons allowed under the CCP.⁷³⁵ BellSouth has adopted both of these metrics – and their associated penalties – region-wide, including in the five states in this

⁷²⁹ See BellSouth Stacy Aff. at paras. 125-28

⁷³⁰ See *id.* at para. 126.

⁷³¹ See *id.* at para. 125.

⁷³² In BellSouth's region in the period from January through March 2002, approximately 50 competing carriers used EDI, 20 used TAG, and 240 used LENS. BellSouth Stacy Aff. at para. 15. Using these interfaces, competitive LECs are submitting more than 1.5 million pre-ordering transactions monthly. BellSouth Stacy Aff. at para. 13.

⁷³³ BellSouth August 30 *Ex Parte* Letter at 2. On the three occasions BellSouth did not meet the interval, BellSouth notes that it needed additional time to investigate the requests and informed the originating competitive LECs that additional time would be needed. BellSouth accepted one of the requests, proposed an alternative solution for another one of the requests, and rejected the third request that the competitive LEC subsequently cancelled. BellSouth August 16 CCP *Ex Parte* Letter at 6.

⁷³⁴ BellSouth August 9 CCP *Ex Parte* Letter at 1-2; see also Letter from Sean A. Lev, Counsel to BellSouth, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-150 at 1 (filed Aug. 15, 2002) (BellSouth August 15 Metrics *Ex Parte* Letter) (correcting attachment to August 9 CCP *Ex Parte*).

⁷³⁵ BellSouth must validate the change request unless BellSouth determines that the competitive LEC-initiated request cannot be accepted because of cost, industry direction or technical infeasibility. See BellSouth Stacy Aff. at para. 85, Exh. WNS-13 (CCP at 36) (describing the acceptance process for request types 2-5).

application.⁷³⁶ Although we cannot rely on these metrics for purposes of the instant application, we believe they will help to ensure that BellSouth continues to accept change requests in a timely manner. Also, we believe metric CM-8 will improve the ability of interested parties and regulatory bodies, including the Commission, to monitor the reasons behind BellSouth's rejection of competitive LEC change requests.⁷³⁷ Although the metric will formally quantify the number of change requests accepted or rejected by BellSouth, it does not affect the underlying criteria that BellSouth must use to make that determination as outlined in the CCP.

192. *Implementation of Prioritized Changes.* Since we issued the *BellSouth Georgia/Louisiana Order*, BellSouth has made progress in providing information to the competitive LECs through the change management process.⁷³⁸ For example, BellSouth has provided 2002 and 2003 capacity information to the competitive LECs and will continue to provide capacity information in the future.⁷³⁹ BellSouth has issued the first quarter 2002 capacity use report using the format requested by the competitive LECs, and BellSouth provided information regarding the size of the flow-through features to competitive LECs on May 15, 2002.⁷⁴⁰ In addition, BellSouth is publishing a quarterly tracking report summarizing the status of the change requests.⁷⁴¹ Finally, among other items, BellSouth and competitive LECs are working collaboratively to revise the testing environment section of the CCP.⁷⁴² Despite these improvements, however, competitive LECs continue to express concerns regarding BellSouth's change management implementation, focusing primarily on two issues: the backlog of approved feature change requests awaiting implementation and the quality of BellSouth's software releases (*i.e.*, number of defects).⁷⁴³ We consider each of these concerns in turn.

193. *Timely Implementation of Change Requests.* Competitive LECs argue that the backlog of change requests awaiting implementation demonstrates that BellSouth is not

⁷³⁶ BellSouth August 9 CCP *Ex Parte* Letter at 1-2; BellSouth August 15 Metrics *Ex Parte* Letter at 1 (correcting attachment to August 9 CCP *Ex Parte*); *see also* Letter from Kathleen B. Levitz, Vice President – Federal Regulatory, BellSouth, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-150 (filed Aug. 22, 2000) (BellSouth August 22 *Ex Parte* Letter). Failure to meet these metrics will result in Tier II penalties. AT&T claims that these penalties are not sufficient to provide an incentive for BellSouth to meet the metric. AT&T August 23 OSS and Data Integrity *Ex Parte* Letter at 3. However, we note that we are not relying upon these metrics for approval of this application.

⁷³⁷ *See* BellSouth September 4 *Ex Parte* Letter at 1; *cf.* AT&T September 9 *Ex Parte* Letter at 1.

⁷³⁸ Department of Justice Evaluation at 9; BellSouth Stacy Aff. at paras. 85-86.

⁷³⁹ BellSouth Stacy Reply Aff. at para. 25; BellSouth August 16 CCP *Ex Parte* Letter at 7.

⁷⁴⁰ BellSouth Stacy Reply Aff. at para. 25.

⁷⁴¹ *Id.*; *see also* BellSouth August 30 *Ex Parte* Letter at 2.

⁷⁴² BellSouth Stacy Reply Aff. at paras. 25, 119.

⁷⁴³ AT&T Bradbury/Norris Decl. at paras. 31-55; AT&T August 23 OSS and Data Integrity *Ex Parte* Letter at 1-4; WorldCom Lichtenberg Decl. at paras. 5-17.

sufficiently adhering to its change management process.⁷⁴⁴ While acknowledging that 63 feature change requests awaited implementation as of the date of this application's filing,⁷⁴⁵ BellSouth explains that it is implementing change requests as quickly as possible given the CCP's lengthy timelines and the limitations of its OSS. As BellSouth explains, the maximum amount of capacity per year for change requests is limited by its OSS architecture.⁷⁴⁶

194. We find, on balance, that BellSouth is implementing the most important competitive LEC-initiated change requests in a timely fashion. Notably, the backlog as it exists today is similar to the backlog as it existed at the time we adopted the *BellSouth Georgia/Louisiana Order*.⁷⁴⁷ In addition, as BellSouth notes, it has implemented a large number of change requests, especially during the past six months,⁷⁴⁸ including nine of the 15 top-ranked feature change requests made by competitive carriers.⁷⁴⁹ We acknowledge that the Department of Justice expressed concern about whether BellSouth has committed sufficient resources to reduce the backlog of change requests in a timely manner.⁷⁵⁰ However, the record indicates that BellSouth has devoted adequate resources to develop and implement change requests – approximately 250,000 hours of work per year to implement change requests, the equivalent of

⁷⁴⁴ AT&T Bradbury/Norris Decl. at paras. 33-44; see also Covad Comments at 21-22 (regarding timeliness of defect corrections).

⁷⁴⁵ BellSouth Stacy Aff. at para. 136. Change feature requests include Type 2 (changes mandated by regulatory authorities), Type 3 (industry standard), Type 4 (BellSouth-initiated), and Type 5 (competitive LEC-initiated changes). Not included in that figure are the 34 defect repairs that were accepted by the change management process, but were not yet implemented as of the filing of this application. Also this number includes only those change requests accepted by BellSouth for implementation; 18 competitive LEC-initiated requests were awaiting acceptance or rejection by BellSouth. *Id.* These numbers reflect a snapshot of the change requests as of June 3, 2002. See also BellSouth Stacy Reply Aff. at paras. 21, 48.

⁷⁴⁶ BellSouth explains that its use of a single OSS limits the number of simultaneous software releases that can be programmed at the same time. BellSouth August 16 CCP *Ex Parte* Letter at 3-4. As BellSouth explains, software developers are often simultaneously testing one release, writing code for another and in the initial planning stages of a third release. *Id.* The releases build upon one another, and therefore, there is a limit to the number of releases that can be efficiently developed at the same time. *Id.* Although we do not rely upon this as a basis for our decision, we note that BellSouth has begun to deploy a new infrastructure that “will provide a more flexible, scalable architecture that will continue to improve BellSouth’s ability to respond to CLEC requests.” *Id.* at 4. Even without this effective cap on change requests, BellSouth notes that an assumption that all requests be implemented as quickly as possible could overwhelm its systems and require infinite BellSouth resources. BellSouth Stacy Reply Aff. at paras. 66-67 (“There are hundreds of CLECs that could make . . . requests for new features. The CCP does not limit the number of CLECs that can participate in the CCP, nor does it limit the number of change requests that any CLEC may submit.”).

⁷⁴⁷ *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9128, para. 194.

⁷⁴⁸ BellSouth Stacy Reply Aff. at para. 21.

⁷⁴⁹ BellSouth Stacy Aff. at para. 160. BellSouth plans to implement all of the “top 15” requests by year-end. BellSouth Stacy Reply at para. 21.

⁷⁵⁰ Department of Justice Evaluation at 10.

\$108 million in expenditures.⁷⁵¹ Moreover, we agree with BellSouth that some change requests will always be pending due to the long lead times inherent in the CCP.⁷⁵²

195. Competitive carriers fear that the backlog of competitive LEC-initiated feature change requests will continue to grow, given the number of defects in BellSouth's latest releases and that defects will typically be implemented before feature change requests.⁷⁵³ We do not think this is a likely scenario. BellSouth has demonstrated that defects in software releases are not significantly contributing to the backlog because defect repairs use a relatively small amount of capacity.⁷⁵⁴ Moreover, we believe BellSouth's recent actions demonstrate that it is working efficiently within the constraints of the CCP and the limitations of its current systems. For these reasons, we find that the way BellSouth has implemented competitive LEC change requests does not deny an efficient competitor a meaningful opportunity to compete.

196. Notwithstanding our conclusion regarding the way BellSouth implements change requests, we are concerned by the length of time that some competitive LECs have been waiting for their change requests to be implemented.⁷⁵⁵ BellSouth has itself acknowledged that it will not significantly reduce the backlog of feature change requests until the end of 2003 and that all currently accepted feature change requests will not be implemented until the third quarter of 2004.⁷⁵⁶ Although we do not find the current level of backlogged change requests causes BellSouth to fail this checklist item, it is not a trend we wish to see continue. Accordingly, we expect BellSouth to follow through on its commitments to improve the efficiency of its change

⁷⁵¹ BellSouth Stacy Reply Aff. at paras. 47, 68.

⁷⁵² BellSouth August 16 CCP *Ex Parte* Letter at 4-5 ("It is unreasonable to expect that there will ever come a time that the New, Pending and Candidate Request categories are empty – so long as CLECs continue to submit requests to the CCP, there will be requests in each category. The critical fact, however, is that requests are moving through the process and are being implemented in a timely fashion."); *see also* BellSouth Stacy Reply Aff. at para. 50. After a change request has been prioritized, the first release package meeting takes place 36 weeks before a production release. BellSouth Stacy Reply Aff. at para. 50. During the application process, BellSouth revised the definition of major and minor releases. Both are now referred to as "production releases." BellSouth Stacy Reply Aff. at para. 50 n.13.

⁷⁵³ Twenty-five feature change requests were implemented from January through June 2, 2002. The rest of the change requests – 83, or more than 75% of the total changes implemented this year – were necessary to correct defects in BellSouth systems. AT&T Bradbury/Norris Decl. at para. 48. For the remainder of 2002, BellSouth has scheduled the implementation of 12 feature change requests. *Id.*

⁷⁵⁴ BellSouth August 16 CCP *Ex Parte* Letter at 6 ("The amount of capacity used to correct the defects is a small fraction of the total capacity available. . . . In 2002, BellSouth used less than 8% of available capacity for defect correction.").

⁷⁵⁵ AT&T Bradbury/Norris Decl. at para. 44. Most of the feature change requests implemented in Release 10.5 were submitted between August 1999 and August 2000 – approximately two to three years prior to implementation. AT&T Bradbury/Norris at para. 48. *See also* Department of Justice Evaluation at 8 (stating that "[a]n important issue still remains, however, regarding whether BellSouth is committing sufficient resources overall to the process of upgrading the interfaces to its OSS used by the [competitive] LECs.").

⁷⁵⁶ BellSouth Stacy Reply Aff. at para. 57.

management process. We note that there are significantly fewer BellSouth-initiated change requests than competitive LEC-initiated change requests.⁷⁵⁷ As allowed by its 50/50 plan in the CCP, BellSouth could use some of its half of the release capacity to implement some of the more highly prioritized or older competitive LEC requests during the course of the next year. If BellSouth continues to evidence an inability to reduce its backlog of change requests, we will consider this issue in the context of a section 271(d)(6) enforcement action. Therefore, we will monitor BellSouth's performance, and we expect and encourage BellSouth to continue to devote adequate resources to this issue.

197. Although not of decisional weight, BellSouth has adopted region-wide a metric⁷⁵⁸ that will measure the number of accepted competitive LEC-initiated change requests implemented within 60 weeks of competitive LEC prioritization.⁷⁵⁹ Penalties, which will also apply region-wide, will be assessed if BellSouth fails to meet the 95 percent benchmark.⁷⁶⁰ We believe this metric will provide an incentive for BellSouth to improve its performance in this area.

198. *Quality of Software Releases.* AT&T and WorldCom allege that the quality of BellSouth's software releases has deteriorated since we approved BellSouth's Georgia/Louisiana application.⁷⁶¹ BellSouth argues that its performance has improved and that its most recent software release has fewer problems than earlier releases.⁷⁶² We find that the quality of BellSouth's software releases has not impaired competitors' access to BellSouth's OSS. To the contrary, we find that the quality of BellSouth's software releases has slightly improved, not deteriorated, since the release of the *BellSouth Georgia/Louisiana Order*.

⁷⁵⁷ Of the 63 outstanding feature changes, 42 have been requested by competitive LECs while only nine have been requested by BellSouth. BellSouth Stacy Reply Aff. at para. 49. Of the remaining feature change requests, 27 are Type 2 (regulatory mandate) while one is a Type 3 (industry standard). *Id.*

⁷⁵⁸ BellSouth August 9 CCP *Ex Parte* Letter at 1-2; see also BellSouth August 15 Metrics *Ex Parte* Letter at 1 (correcting attachment to August 9 CCP *Ex Parte* Letter).

⁷⁵⁹ When a feature change request is submitted by a competitive LEC, BellSouth has 10 days to accept or reject the request. BellSouth can reject competitive LEC change requests based on cost, industry direction and technical infeasibility. See BellSouth Stacy Aff. at para. 85, Exh. WNS-13 (CCP at 33). BellSouth must provide competitive LECs with a rationale for its decisions, and competitive LECs can appeal BellSouth's decision, using either the escalation process or by filing a complaint with a regulatory body. If a change request is accepted, the request then is submitted to competitive LECs for prioritization, *i.e.*, a competitive LEC ranking of how important the change request is, which determines how soon it will be implemented.

⁷⁶⁰ BellSouth August 9 CCP *Ex Parte* Letter at 1-2; see also BellSouth August 15 Metrics *Ex Parte* Letter at 1 (correcting attachment to August 9 CCP *Ex Parte* Letter). Failure to meet these metrics will result in Tier II penalties. As noted above, AT&T claims that these penalties are not sufficient to provide an incentive for BellSouth to meet the metric. AT&T August 23 OSS and Data Integrity *Ex Parte* Letter at 3. However, we note that we are not relying upon these metrics for approval of this application.

⁷⁶¹ WorldCom Comments at 2; AT&T Bradbury/Norris Decl. at paras. 63-68.

⁷⁶² BellSouth Stacy Reply Aff. at para. 74; BellSouth August 16 CCP *Ex Parte* Letter at 5-6.

199. Between the issuance of the *BellSouth Georgia/Louisiana Order* and the filing of the instant application, BellSouth implemented only one software release – Release 10.5 on June 1-2, 2002.⁷⁶³ BellSouth identified approximately 35 post-production, competitive LEC-affecting defects during the 30 days following the release⁷⁶⁴ – slightly more defects than identified in the releases examined in the Georgia/Louisiana proceeding (Releases 10.2 and 10.3).⁷⁶⁵ Competitive LECs allege that the number of defects is beyond the industry standard and demonstrates that BellSouth does not properly perform pre-release internal testing.⁷⁶⁶ However, looking only at the number of defects in Release 10.5 does not tell the entire story.⁷⁶⁷ First, when compared to the releases examined by the Commission in the *BellSouth Georgia/Louisiana Order*, Release 10.5 had fewer problems than those releases when the complexity of the releases (defects per function point) is taken into account.⁷⁶⁸ For example, Release 10.3 had 0.00708 defects per function point while Release 10.5 had 0.00467 defects per function point.⁷⁶⁹ Second, we reject competitive LEC claims that they were significantly harmed by the defects.⁷⁷⁰ Of the 35 defects in Release

⁷⁶³ BellSouth Stacy Aff. at para. 144. Release 10.5 was implemented on June 1-2, 2002, with two severity level 3 defects (formerly known as “medium-impact” defects). BellSouth Stacy Reply Aff. at para. 73.

⁷⁶⁴ BellSouth also indicated that there were only 34 competitive LEC-affecting defects in Release 10.5. BellSouth Stacy Reply Aff. at para. 74. BellSouth explained that a consultant, QP Management, analyzed the quality of Release 10.5 and found that one of the 35 defects attributed to Release 10.4 was actually attributable to Release 10.4. BellSouth August 21 *Ex Parte* Letter at 2. As a result, in analyzing the quality of Release 10.5, QP Management used the figure of 34 competitive LEC-affecting defects, instead of 35. *Id.*

⁷⁶⁵ BellSouth Stacy Reply Aff. at para. 73. Release 10.5 was delayed two weeks while BellSouth corrected other defects that were identified in pre-production testing. BellSouth Stacy Aff. at para. 144.

⁷⁶⁶ WorldCom Comments at 2 (“Recent Verizon releases, for example, had almost no defects.”).

⁷⁶⁷ Releases 10.2 and 10.3 were examined in the Georgia/Louisiana proceeding. *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9129, para. 195. Release 10.2 had 34 competitive LEC-affecting defects while Release 10.3 had 25 competitive LEC-affecting defects. BellSouth Stacy Reply Aff. at para. 75, Exh. WNS-32 at App. A.

⁷⁶⁸ The software industry uses a metric called defect density to measure the quality of a software release. This metric compares the number of identified defects to the number of function points implemented in the release. A function point is an industry standard metric for defining the complexity of a given piece of software, based on the business functionality provided by the software. BellSouth Stacy Reply Aff. at para. 74. By this measure, Release 10.5 had 34 competitive LEC-affecting defects and 60 non-competitive LEC-affecting defects out of 20,108 function points for a ratio of 0.00467 defects per function point. By contrast, Release 10.3 had 39 competitive LEC-affecting defects with a ratio of 0.00708 defects per function point, and Release 10.4 had 54 competitive LEC-affecting defects with a ratio of 0.00682 defects per function point. In addition, BellSouth points out that Release 10.5 would meet the industry standard of “best in class.” BellSouth Stacy Reply Aff. at para. 74. BellSouth has also indicated that there were 35 competitive LEC-affecting defects in Release 10.5. BellSouth Stacy Reply Aff. at para. 80.

⁷⁶⁹ BellSouth Stacy Reply Aff. at para. 75, Exh. WNS-32 at App. A.

⁷⁷⁰ WorldCom states that one of the defects in Release 10.5 temporarily led to the rejection of all orders requesting migration of a customer from one competitive LEC to another. WorldCom Comments at 3. Another defect led to rejection of all supplemental orders for customers whose addresses include a Building, Slip or Pier, and a third led to rejection of all orders submitted by competitive LECs using BellSouth’s TAG interface for version 7.6 or below. *Id.*

10.5, 30 of the defects each affected only a handful of the LSRs that were in progress during the transition from software version 10.4 to 10.5.⁷⁷¹ At most, only about 9,000 competitive LEC orders were affected by all the defects, a number equal to only 0.07 percent of total LSR volume.⁷⁷² As BellSouth demonstrates, it fixed, within the 10-day deadline established by the CCP, those five defects that affected a significant number of competitive LEC orders or had a significant effect on the competitive LECs' ability to process orders.⁷⁷³ Third, correcting those defects, as noted above, requires only minimal capacity and does not add to the current backlog of change features waiting to be implemented.⁷⁷⁴

200. Finally, while we share the concern expressed by the Department of Justice and the competitive LECs regarding the number of defects in BellSouth's releases,⁷⁷⁵ we note that BellSouth has adopted practices to minimize defects in future releases.⁷⁷⁶ In fact, although not a basis for our decision,⁷⁷⁷ we recognize that Release 10.6, which was implemented August 24,

⁷⁷¹ BellSouth Stacy Reply Aff. at para. 77.

⁷⁷² BellSouth Stacy Aff. at para. 146; BellSouth Stacy Reply Aff. at para. 78.

⁷⁷³ BellSouth Stacy Reply Aff. at para. 78. All "CLEC-affecting" high-impact defects must be corrected within 10 days. BellSouth Stacy Aff. at para. 85, Exh. WNS-13 (CCP at 55). Defect CR0802, which caused some loop make-up inquiries and firm order requests submitted from LENS to fail unexpectedly, was corrected on June 5, 2002. Defect CR0804 produced an error code that was being set incorrectly for resale and UNE-P migration orders conversion and specified orders when the LSR competitive LEC OCN and the OCN on the CRIS record did not match. The defect was corrected on June 3, 2002. Defect CR0805, which caused some LSRs to be auto-clarified even though the LSRs contained the correct information, was corrected on June 5, 2002. Defect CR 0807, which caused supplemental orders placed on LSRs submitted before Release 10.5 to be routed to the wrong exception handling tool, was corrected on June 6, 2002. Because of defect CR0812, BellSouth's OSS did not send a completion notice to the competitive LEC for certain types of orders. This situation occurred only on certain LSRs that existed before the implementation of 10.5 but the actual service order completion was after the implementation. This only happened after an auto-clarification had been sent and only when the auto-clarification was produced from a certain module in BellSouth's architecture. This problem was corrected on June 10, 2002. BellSouth Stacy Reply Aff. at para. 78.

⁷⁷⁴ BellSouth August 16 CCP *Ex Parte* Letter at 6 ("The amount of capacity used to correct the defects is a small fraction of the total capacity available. . . . In 2002, BellSouth used less than 8% of available capacity for defect correction.").

⁷⁷⁵ Department of Justice Evaluation at 12 (stating that "[t]he Commission should carefully monitor BellSouth's future releases.").

⁷⁷⁶ BellSouth Stacy Reply Aff. at paras. 81-82. Although we do not rely upon these processes, BellSouth has identified a few changes it plans to make to decrease the number of defects. First, prior to the software release, it will stop taking new orders and let the orders already placed make their way through BellSouth's systems. BellSouth August 16 CCP *Ex Parte* Letter at 6. That process should eliminate some defects caused by orders that are still working their way through BellSouth's OSS and are caught in the transition. *Id.* Second, BellSouth is expanding the number of test cases it uses during testing to identify any problems prior to production implementation. BellSouth Stacy Reply Aff. at para. 82.

⁷⁷⁷ Because of our freeze frame rule, we decline to consider Release 10.6 in this Application. *See 271 Filing Requirements* at 20950-51.

2002, during the 90-day statutory timeframe for this application, contains proportionately fewer defects than other recent releases.⁷⁷⁸ We are encouraged by these developments.

201. Although not of decisional weight, BellSouth has added a new metric that will measure the intervals for defect repairs.⁷⁷⁹ Under the new metric, high-impact defects must be corrected in 10 days, medium impact must be corrected in 30 days, and low impact defects must be corrected in 45 days.⁷⁸⁰ BellSouth has adopted these metrics, and their associated penalties in the SEEM plan, throughout its nine-state region, including in the states that are the subject of this application.⁷⁸¹ We believe these metrics will provide an incentive for BellSouth to improve its performance in this area. In addition, we are encouraged that BellSouth is working with state regulators and competitive LECs to change its procedures to reduce the number of defects in its releases. As the Department of Justice notes, if additional resources are required to correct these problems, we expect BellSouth to provide them.⁷⁸² Accordingly, we will continue to monitor BellSouth's performance and will take enforcement action, if necessary.

202. Furthermore, we are not persuaded by competitive LEC claims that BellSouth misclassifies its change requests to evade repair interval requirements. Competitive LECs claim that BellSouth has misclassified a number of defect change requests as "feature" change requests or as change requests based on a regulatory mandate.⁷⁸³ In addition, competitive LECs claim that BellSouth is assigning defects to the wrong category, *e.g.* labeling a high-impact defect as a medium-impact defect, to take advantage of longer repair intervals.⁷⁸⁴ We do not find the

⁷⁷⁸ In *ex parte* filings, AT&T and WorldCom claim that BellSouth's Release 10.6 is "riddled" with defects. See AT&T September 9 *Ex Parte* Letter at 1; WorldCom September 12 *Ex Parte* Filing at 1-2. However, BellSouth has identified only seven competitive LEC-affecting defects attributable to its Release 10.6. Letter from Kathleen B. Levitz, Vice President – Federal Regulatory, BellSouth, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-150 at 4 (filed Sept. 10, 2002) (BellSouth September 10 *Ex Parte* Letter). BellSouth also identified five other defects that were attributed to other releases, but discovered after Release 10.6 was implemented. *Id.*

⁷⁷⁹ BellSouth August 9 CCP *Ex Parte* Letter at 1-2; see also BellSouth August 15 Metrics *Ex Parte* Letter at 1 (correcting attachment to August 9 CCP *Ex Parte* Letter).

⁷⁸⁰ The prior standard required "high impact" defects to be corrected in 10 business days, "medium impact" to be corrected within 90 business days, and "low impact" to be corrected with "best efforts" (although BellSouth had committed to a 120-day interval). BellSouth Stacy Aff. at para. 85, Exh. WNS-13 (CCP at 55).

⁷⁸¹ BellSouth August 9 CCP *Ex Parte* Letter. As noted above, AT&T claims that these penalties are not sufficient to provide an incentive for BellSouth to meet the metric. AT&T August 23 OSS and Data Integrity *Ex Parte* Letter at 3. However, we note that we are not relying upon these metrics for approval of this application.

⁷⁸² Department of Justice Evaluation at 12.

⁷⁸³ AT&T Comments at 12, 13; WorldCom Lichtenberg Decl. at para. 14.

⁷⁸⁴ WorldCom September 12 *Ex Parte* Letter at 3. As noted above, the prior standard required "high impact" defects to be corrected in 10 business days, "medium impact" to be corrected within 90 business days, and "low impact" to be corrected with "best efforts" (although BellSouth had committed to a 120-day interval). BellSouth Stacy Aff. at para. 85, Exh. WNS-13 (CCP at 55).

competitive LEC assertion that BellSouth is purposefully mischaracterizing change requests in order to avoid CCP requirements persuasive. Instead, it appears this problem is the result of a dispute between BellSouth and the competitive LECs regarding the definition of a defect.⁷⁸⁵ The shorter intervals to repair change requests should decrease any incentive BellSouth may have to mislabel defects.

203. *Notification Adequacy and Timeliness.* We find that BellSouth has established a pattern of compliance with the intervals established in the Change Control Process for notification of a variety of system changes.⁷⁸⁶ Commercial data reveal a pattern of BellSouth's providing notice of system changes in a timely, complete, and accurate manner.⁷⁸⁷ In addition, the Georgia KPMG test, demonstrates that BellSouth's notification procedures are sufficient for checklist compliance.⁷⁸⁸ Additionally, we find that BellSouth generally adheres to its notification schedule⁷⁸⁹ and that the documentation for the most recent releases has been timely

⁷⁸⁵ The dispute has been submitted to the Georgia Commission for resolution. BellSouth explains that under the existing CCP, a competitive LEC-affecting defect is defined to include errors that are made when designing and subsequently coding the software and errors made because of an oversight in documenting the functionality that should be created. BellSouth argues that the latter reason is not truly a defect because developers do not have a "road map" that indicates how the software should behave or what changes should be made to correct the problem. BellSouth Stacy Reply Aff. at paras. 91-92. To correct this type of defect, new business rules, user requirements, and system requirements must be developed. BellSouth argues that the development of this additional functionality is a new change request. *Id.* at para. 92.

⁷⁸⁶ The Commission's prior section 271 orders recognize the importance of a BOC's provision of timely, complete, and accurate notice of alterations to its systems and processes and, therefore, the Commission requires that a BOC have "established a pattern of compliance with the relevance notification and documentation intervals in its Change Agreement." *SWBT Texas Order*, 15 FCC Rcd at 18415, para. 126.

⁷⁸⁷ BellSouth provides notice of software releases in a timely manner. *See* Alabama/Kentucky/Mississippi/North Carolina/South Carolina F.10.1 (% Software Release Notices Sent on Time); Alabama/Kentucky/Mississippi/North Carolina/South Carolina F.10.2 (Average Software Release Notification Delay Days). Third-party testing also shows timely notice of software releases. KPMG MTP Final Report, Test CM-1-1-5, at VIII-A-20 (finding that the Change Control Process "has defined and reasonable intervals for considering and notifying customers about proposed changes"). *See* Alabama/Kentucky/Mississippi/North Carolina/South Carolina F.10.3 (% Change Management Documentation Sent on Time); Alabama/Kentucky/Mississippi/North Carolina/South Carolina F.10.5 (Average Documentation Release Delay Days); BellSouth Varner Aff. at Exhs. PM-2, paras. 93-98; PM-3, paras. 93-98; PM-4, paras. 92-97; PM-5, paras. 92-97; PM-6, paras. 92-97.

⁷⁸⁸ *See* KPMG MTP Final Report, Test CM-1-1-6, at VIII-A-21 (finding that "[d]ocumentation regarding proposed changes is distributed on a timely basis"). *See also* section IV.B.2.a, *supra* (discussing the regionality of BellSouth's OSS).

⁷⁸⁹ In the *SWBT Texas Order*, the Commission found SWBT's provision of documentation to be sufficiently timely despite its failure to strictly meet specified deadlines. *SWBT Texas Order*, 15 FCC Rcd at 18416, paras. 128-29 & nn.340, 343.

and complete.⁷⁹⁰ Finally, we find that BellSouth consistently provides competing carriers notice of, and information about, access to its electronic interfaces.⁷⁹¹

204. While it appears that BellSouth is generally adhering to the notification intervals required by the CCP, commenters allege that BellSouth has failed to notify competitive LECs of some interface changes either at all, or has notified them significantly after a competitive “CLEC-affecting” change has been implemented.⁷⁹² We address specific allegations in this regard in turn.

205. First, we reject Birch’s request that the legacy systems of BellSouth’s directory publisher affiliate, BellSouth Advertising Publishing Company (BAPCO), be subject to the CCP.⁷⁹³ Birch alleges that competitive LECs were not properly notified of a change to BAPCO’s systems to fix a partial directory listing deficiency, which resulted in telephone numbers of Birch’s end users being omitted from BAPCO’s telephone book.⁷⁹⁴ However, the scope of the CCP only includes BellSouth gateways or interfaces with competitive LECs.⁷⁹⁵ As we have noted in prior orders, changes that do not affect OSS interfaces are not necessarily required to be a part of the change management process.⁷⁹⁶ Accordingly, we do not find that Birch’s claim warrants a finding of checklist noncompliance.

206. Second, we are not persuaded that BellSouth’s failure to notify competitive LECs of its intention to reject competitive LEC orders that choose BellSouth Long Distance (BSLD) as the end user’s primary interexchange carrier (PIC) warrants a finding of noncompliance.⁷⁹⁷ Specifically, WorldCom contends that BellSouth began rejecting orders listing BSLD as the PIC in May, but did not notify competitive LECs until June 14, 2002.⁷⁹⁸ BellSouth acknowledges that it posted a carrier notification on June 14, 2002, advising competitive LECs that BellSouth

⁷⁹⁰ BellSouth Stacy Aff. at para. 151.

⁷⁹¹ See Alabama/Kentucky/Mississippi/North Carolina/South Carolina F.10.6 (% Interface Outage Notices Sent Within 15 Minutes). From March through June, BellSouth had a perfect record of providing notice to competitive LECs about interface outages.

⁷⁹² WorldCom Lichtenberg Decl. at paras. 25-36; Birch Comments at 20-25; Birch August 23 *Ex Parte* Letter at 5-6.

⁷⁹³ Birch Comments at 25.

⁷⁹⁴ *Id.* at 21.

⁷⁹⁵ BellSouth Stacy Aff. at para. 85, Ex. WNS-13 (CCP at 17); see also BellSouth August 30 *Ex Parte* Letter at 3 (stating that “the BAPCO system change had no affect[sic] on [CLEC] interfaces.”).

⁷⁹⁶ *Verizon Pennsylvania Order*, 16 FCC Rcd at 17451, para. 51 (accepting Verizon’s argument that “the changes to the BOS BDT billing systems are ‘back-office’ OSS changes that do not impact OSS interfaces”).

⁷⁹⁷ WorldCom Comments at 6-7.

⁷⁹⁸ These orders were for end users in Georgia and Louisiana. However, this issue is relevant to this application because BellSouth’s CCP is regionwide.

would not accept orders for BSLD if the submitting carrier does not have an operational agreement with BSLD.⁷⁹⁹ BellSouth explains, however, that the feature rejecting competitive LEC orders for BSLD was initiated in July 1997, and has existed in BellSouth's systems since its implementation.⁸⁰⁰ BellSouth therefore states that the June 14, 2002 announcement was a reminder to competitive LECs of its existing procedures. While we do not discount the potential inconvenience this may have caused competitive LECs, we do not find that this isolated instance indicates a systemic problem with BellSouth's change management notification process that might warrant a finding of checklist noncompliance.⁸⁰¹

207. Commenters also contend that BellSouth did not provide competitive LECs with adequate prior written notice when it implemented PMAP 4.0.⁸⁰² We address this issue above in our discussion of the reliability of BellSouth's data.⁸⁰³

(ii) Training, Technical Assistance, and Help Desk Support

208. As we did in the *BellSouth Georgia/Louisiana Order*, we find that BellSouth adequately assists competing carriers in their use of available OSS functions.⁸⁰⁴ BellSouth demonstrates that it teaches a wide variety of training courses for competing carriers to assist in programming as well as ordering, pre-ordering, provisioning, and maintenance and repair.⁸⁰⁵ Also, BellSouth provides several help desks to assist competing carriers in using OSS.⁸⁰⁶ BellSouth demonstrates that its services centers are adequately staffed and able to handle spikes in their work loads.⁸⁰⁷ The same organizations that we found performed these functions in the *BellSouth Georgia/Louisiana Order* also perform these functions for competing carriers operating in the five states.⁸⁰⁸ Because the support organizations' personnel are the same as those used by competing carriers in Georgia and Louisiana and because the record does not indicate the BellSouth organizations provide inadequate or discriminatory treatment to

⁷⁹⁹ Letter from Kathleen B. Levitz, Vice President – Federal Regulatory, BellSouth, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-150 at 3 (filed Aug. 9, 2002) (BellSouth August 9 OSS *Ex Parte* Letter).

⁸⁰⁰ *Id.*

⁸⁰¹ If evidence becomes available to the Commission sufficient to show that a systemic problem with BellSouth's notification process, we will pursue appropriate enforcement action.

⁸⁰² See, e.g., AT&T Bursh/Norris Aff. at para. 16.

⁸⁰³ For a discussion of BellSouth's data reliability, see section III, *supra*.

⁸⁰⁴ See *Bell Atlantic New York Order*, 15 FCC Rcd at 4012, para. 126.

⁸⁰⁵ BellSouth Ainsworth Aff. at para. 42.

⁸⁰⁶ *Id.* at paras. 7-38.

⁸⁰⁷ *Id.*

⁸⁰⁸ *Id.* at para. 5; *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9132, para. 198.

competing carriers, we find that BellSouth demonstrates that it provides efficient competitors a meaningful opportunity to compete by enabling them to understand how to implement and use all of the OSS functions available to them.

3. UNE Combinations (UNE-P and EELs)

209. In order to satisfy section 271(c)(2)(B)(ii), a BOC must demonstrate that it provides nondiscriminatory access to network elements on an unbundled basis at any technically feasible point and in a manner that allows requesting carriers to combine such elements.⁸⁰⁹ In addition, a BOC must not separate already combined elements, except at the specific request of the competing carrier.⁸¹⁰

210. BellSouth has demonstrated that it has a legal obligation, under its Statement of Generally Available Terms and Conditions (SGAT) in each of the states, to provide access to combinations of network elements, including UNE-platform, a loop-switch port combination, and the enhanced extended loop (EEL), a combination of loop and transport facilities. Accordingly, BellSouth provides UNEs, including UNE combinations, in the five states in the same manner as the Commission approved in Georgia and Louisiana.⁸¹¹ BellSouth also provides a variety of methods that allow competitive carriers to combine unbundled network elements. BellSouth demonstrates that competitive LECs can order UNE-P and EELs electronically, and that commercial experience proves this is done in a nondiscriminatory manner.⁸¹² Based on the evidence in the record, we conclude, as did the state commissions, that BellSouth provides access to UNE combinations in compliance with Commission rules.⁸¹³

211. We reject NewSouth's claims that BellSouth does not comply with the Commission's requirements regarding EELs audits.⁸¹⁴ NewSouth alleges that BellSouth has not identified a reasonable concern regarding NewSouth's compliance with EELs local usage restrictions. Based on this record, it does not appear that BellSouth's EELs audit request

⁸⁰⁹ 47 U.S.C. § 251(c)(3); 47 U.S.C. § 271(c)(2)(B)(ii).

⁸¹⁰ 47 U.S.C. § 271(c)(2)(B)(ii); 47 C.F.R. § 51.313(b).

⁸¹¹ BellSouth Application at 40; BellSouth Application App. A, Vol. 3a, Tab F, Affidavit of W. Keith Milner (BellSouth Milner Aff.) at para. 63; *see also BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9132-33, para. 199.

⁸¹² BellSouth Stacy Aff. at paras. 282-84; BellSouth Stacy Reply Aff. at para. 145. As part of Release 10.5, BellSouth implemented the electronic ordering of EELs. Requests for EELs are then routed to the LCSC for manual handling. Competitive LECs also may still order EELs manually. BellSouth Stacy Aff. at paras. 280-81.

⁸¹³ BellSouth Milner Aff. at 91; BellSouth Ruscilli/Cox Aff. at para. 6.

⁸¹⁴ *See New South August 5 Ex Parte Letter* at 6 (claiming that "BellSouth insists upon harassing NewSouth and other competitors with audit requests that do not comply with the limitations on such audits established in [Commission] orders.").

expressly violates a Commission rule.⁸¹⁵ Moreover, we note that there is a separate proceeding pending before the Commission on the appropriateness of EELs audits.⁸¹⁶ Accordingly, we decline to find that this issue warrants a finding of checklist noncompliance. We further reject NewSouth's contention that it has experienced "considerable delays" in the conversion of special access to EELs.⁸¹⁷ BellSouth notes that, for an order of at least 15 EELs conversions submitted at the same time, the target implementation interval is 37 days.⁸¹⁸ BellSouth claims that EELs conversions submitted via spreadsheets for all competitive LECs and for NewSouth specifically have averaged approximately 43 days during the past seven months.⁸¹⁹ While we find that this issue alone does not warrant a finding of noncompliance with checklist item 2, we emphasize that BellSouth must convert special access to EELs in a timely fashion, in accordance with current requirements.⁸²⁰

212. US LEC argues that the disallowance of co-mingled traffic, early termination penalties, and surcharges are obstacles to its ability to convert special access circuits to EELs.⁸²¹

⁸¹⁵ However, we emphasize that the Commission has found that incumbent LECs may conduct limited audits only to the extent reasonably necessary to determine a requesting carrier's compliance with the local usage options. *See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Supplemental Order Clarification, 15 FCC Rcd 9587, 9603 n.86 (*Supplemental Order Clarification*) ("[Certain incumbent LECs and competitive LECs] state that audits will not be routine practice, but will only be undertaken when the incumbent LEC has a concern that a requesting carrier has not met the criteria for providing a significant amount of local exchange service. . . . We agree that this should be the only time that an incumbent LEC should request an audit.")

⁸¹⁶ *See Pleading Cycle Established for Comments on NuVox, Inc. Petition for Declaratory Ruling*, CC Docket No. 96-98, Public Notice, DA 02-1302 (rel. June 4, 2002). These claims raise issues of interpretation under our rules that are more appropriately resolved in an enforcement proceeding rather than the limited timeframe of a section 271 application.

⁸¹⁷ NewSouth August 5 *Ex Parte* Letter at 7.

⁸¹⁸ NewSouth submits a list of the circuits to be converted via spreadsheet. The spreadsheets are sent to BellSouth's Local Service Manager, who verifies that the circuits qualify for EELs. This process takes seven days. Then BellSouth's Local Carrier Service Center readies the spreadsheet for order issuance and submits the required service orders for processing. The resulting service orders are then verified for accuracy and any errors are corrected. This part of the process is scheduled to take 30 days. In total, BellSouth schedules a 37-day implementation process. BellSouth August 15 Non-pricing *Ex Parte* Letter at 4.

⁸¹⁹ BellSouth August 15 Non-pricing *Ex Parte* Letter at 4; *see also* Letter from Kathleen B. Levitz, Vice President – Federal Regulatory, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-150 at 1 (filed Sept. 3, 2002) (BellSouth September 3 *Ex Parte* Letter).

⁸²⁰ In the *Supplemental Order Clarification*, the Commission found that the incumbent LEC should "immediately process" the conversion upon its receipt of a conversion request that indicates that the circuits involved meet one of the three thresholds for significant local usage. *Supplemental Order Clarification*, 15 FCC Rcd at 9603, para. 31. As the Commission noted in the *Bell Atlantic New York Order*, carriers that are experiencing delays in the provisioning of special access circuits ordered from incumbent LEC tariffs should address these issues to the Commission in the context of a section 208 complaint. *Bell Atlantic New York Order*, 15 FCC Rcd 4124, para. 341.

⁸²¹ US LEC Comments at 9-13. Specifically, US LEC alleges that the current rules regarding unbundled loops and loop-transport combinations (enhanced extended links or 'EELs') have impeded its ability to compete with (continued....)

As in the *BellSouth Georgia/Louisiana Order*, we reject these claims.⁸²² We have found some of these practices acceptable while others, while not preferable from the competitive LEC perspective, do not expressly violate the Commission's rules. Likewise, the Commission declines to reevaluate our earlier finding that checklist compliance does not encompass the provision of tariffed interstate access services.⁸²³

V. OTHER CHECKLIST ITEMS

A. Checklist Item 1 – Interconnection

213. Section 271(c)(2)(B)(i) requires the BOC to provide equal-in-quality interconnection on terms and conditions that are just, reasonable and nondiscriminatory in accordance with the requirements of sections 251 and 252. Based on our review of the record, we conclude, as did the state commissions,⁸²⁴ that BellSouth complies with the requirements of this checklist item. In reaching this conclusion, we have examined BellSouth's performance in providing collocation and interconnection trunks to competing carriers, as we have done in prior section 271 proceedings. We find that BellSouth's performance generally satisfies the applicable benchmark or retail comparison standards for this checklist item.⁸²⁵

214. NewSouth contends that BellSouth's interconnection performance fails to comply with checklist item 1.⁸²⁶ In particular, NewSouth states that over the last ten months, it has experienced seven significant interconnection outages with BellSouth, which in the aggregate

(Continued from previous page)

BellSouth. *Id.* at 9. US LEC also notes that it has experienced protracted negotiations, delayed conversion requests, and long provisioning intervals when requesting EELs. *Id.* US LEC, however, did not provide any specifics regarding those allegations so it is impossible for us to resolve them here. Furthermore, as the Commission has found in prior proceedings, the section 208 complaint process is the more appropriate forum to examine this type of carrier-specific allegation. See, e.g., *Verizon Vermont Order*, 17 FCC Rcd at 7651, para. 46; *SWBT Texas Order*, 15 FCC Rcd at 18366-67, paras. 22-27 and at 18541, para. 383; *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6355, para. 230.

⁸²² *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9133-34, para. 200 (“[W]e reject comments by US LEC/XO that the disallowance of co-mingled traffic, early termination penalties, and surcharges are obstacles to their ability to convert special access circuits to EELs.”); *Supplemental Order Clarification*, 15 FCC Rcd at 9598-9604, paras. 21-32; see also *SWBT Texas Order*, 15 FCC Rcd at 18468-70, paras. 224-28; *Verizon Pennsylvania Order*, 16 FCC Rcd at 17460-61, paras. 73-75.

⁸²³ *Bell Atlantic New York Order*, 15 FCC Rcd 4123, para. 340.

⁸²⁴ See Alabama Commission Comments at 81; Kentucky Commission Comments at 15; Mississippi Commission Comments at 3; North Carolina Commission Comments at 44; South Carolina Commission Comments at 1.

⁸²⁵ We review the order completion interval, percent missed installation appointment, and trunk group performance metrics to determine compliance with checklist item 1. BellSouth met or exceeded the benchmark and parity standards for these metrics, with one minor exception. See Alabama C.2.1 (Order Completion Interval, Local Interconnection Trunks) (out of parity in April in Alabama).

⁸²⁶ NewSouth August 5 *Ex Parte* Letter.

lasted more than 63 hours, and resulted in more than 150,000 blocked calls.⁸²⁷ In each instance, New South contends that its customers were unable to receive or complete local and/or long distance calls.⁸²⁸ NewSouth claims that the outages are due to improperly performed translation changes or upgrades by BellSouth without adequate notice of the specific date upon which they were scheduled to occur.⁸²⁹ In order to prevent future outages, NewSouth has proposed, among other things, that BellSouth exchange documents relating to transition changes, notify NewSouth of all ongoing and planned projects which might impact NewSouth, provide a distribution schedule of translations and switch upgrade projects and identification of contacts for each, and a contractual commitment from BellSouth that NewSouth will be contacted every time translations are modified on its trunk groups, and an action plan that details the specific steps BellSouth is implementing in the LISC/NISC to assure that errors are not repeated.⁸³⁰

215. According to BellSouth, however, it has investigated the seven outages and determined that only three were specific to NewSouth, and could not find a record of a trouble report for the seventh outage occurring on January 7, 2002, in Mobile, Alabama.⁸³¹ BellSouth indicates that the six outages occurred over a ten-month period in four different states, and no systemic operational issues have been identified.⁸³² BellSouth also explains that during the time period covered by these six outages, it made thousands of translation changes in its switches and, for the overwhelming majority, the changes were accomplished without incident.⁸³³ BellSouth states that for NewSouth alone, BellSouth has made translations changes for approximately 4,863 trunks during this time period.⁸³⁴

216. We find that the record demonstrates that, overall, BellSouth provides interconnection to competing LECs at an acceptable quality. While we are concerned with the number and scope of network outages that NewSouth has experienced in such a short period of time, we do not believe that these warrant a finding of checklist noncompliance. We find it significant that BellSouth has performed literally thousands of translations changes, during the same period, without any reported problems, and we observe that there is no evidence that the problem indicates a systemic flaw in BellSouth's operations. Furthermore, as in prior section

⁸²⁷ NewSouth August 5 *Ex Parte* Letter at 2. NewSouth indicates that the outages occurred in Mobile, Alabama, Charlotte, North Carolina, Louisville, Kentucky and Spartanburg, South Carolina. *Id.* NewSouth contends that the outages had an almost universal impact on NewSouth's customer base in Charlotte, North Carolina, Mobile, Alabama, and Spartanburg, South Carolina. *Id.*

⁸²⁸ *Id.*

⁸²⁹ *Id.*

⁸³⁰ *Id.* at 4-5.

⁸³¹ See BellSouth August 15 Non-pricing *Ex Parte* Letter at 2.

⁸³² *Id.*

⁸³³ *Id.*

⁸³⁴ *Id.*

271 applications, we rely on trunk blockage data to evaluate a BOC's interconnection quality. We find that BellSouth's performance data demonstrate that it provides interconnection that is equal-in-quality to the interconnection it provides in its own network. In particular, BellSouth met or exceeded the benchmark for trunk blockage in all five states for the relevant period.⁸³⁵ Accordingly, in light of BellSouth's overall trunk blockage performance and that the majority of its switch translations are accomplished without incident, we do not find that NewSouth's claims warrant a finding of checklist noncompliance. Should BellSouth's performance in this area deteriorate, we will pursue appropriate enforcement action.

217. *Collocation.* We conclude that BellSouth provides legally binding terms and conditions for collocation in its interconnection agreements and SGATs. In reaching this conclusion, we note that BellSouth states that it permits the collocation of equipment as required in the *Collocation Remand Order*.⁸³⁶ Furthermore, we find that BellSouth has met all of the applicable performance metrics for collocation for the relevant months in each of the states.⁸³⁷

218. *Other Issues.* Supra claims that BellSouth has not provided competitive LECs with nondiscriminatory access to interconnection.⁸³⁸ Supra contends that in seeking to implement its interconnection agreement with BellSouth, it has faced numerous problems and hurdles put in place by BellSouth.⁸³⁹ As the Commission found in previous proceedings, given the time constraints, the section 271 process simply could not function if we were required to resolve every interpretive dispute between a BOC and each competitive LEC about the precise content of the BOC's obligations to its competitors.⁸⁴⁰ These claims are not indicative of BellSouth's ability to provide interconnection. Rather, these claims are fact-specific disputes between independent competitive LECs and BellSouth regarding its statutory obligations. We find, therefore, that a complaint brought to a state commission or to this Commission pursuant to section 208 are more appropriate venues for such allegations to be examined, and we do not resolve them here.

219. *Pricing of Interconnection.* Commenters allege two distinct types of interconnection pricing violations. KMC and NuVox contend that BellSouth is charging tariffed access rates for interconnection trunks and facilities in violation of the Commission's TELRIC

⁸³⁵ See Alabama/Kentucky/Mississippi/North Carolina/South Carolina C.5.1 (Trunk Group Performance – Aggregate).

⁸³⁶ BellSouth Application at 33.

⁸³⁷ See Alabama/Kentucky/Mississippi/North Carolina/South Carolina E.1 (Collocation).

⁸³⁸ See generally Supra Comments at 2-6.

⁸³⁹ *Id.* at 2.

⁸⁴⁰ *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9139, para. 209; *Verizon Pennsylvania Order*, 16 FCC Rcd at 17475, para. 101; *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6355, para. 230; *SWBT Texas Order*, 15 FCC Rcd at 18366-67, paras. 22-27.

pricing rules. NewSouth makes similar claims.⁸⁴¹ AT&T argues that BellSouth denies competitive LECs the ability to define the scope of their local calling areas and to exchange local traffic with BellSouth based on the competitive LEC's definition, not BellSouth's definition, of the local calling area.⁸⁴² After reviewing the record before us, we find no violation of checklist item 1.

220. KMC and NuVox's joint comments state that "BellSouth historically has charged NuVox and other CLECs [tariffed] access rates [for interconnection trunks and facilities] . . . in violation of Section 252(d)(2) of the Act and the Commission's pricing rules set forth in the *Local Competition Order*."⁸⁴³ Since the filing of these comments, however, KMC and BellSouth "have reached agreement in principle on billing disputes associated with interconnection trunks and facilities, subject to the parties' execution of a confidential settlement agreement incorporating those terms."⁸⁴⁴

221. NuVox and BellSouth also have "resolved their billing dispute relating to interconnection trunks and facilities for the term of their current interconnection agreement, subject to incorporation of the terms of settlement into a confidential settlement agreement."⁸⁴⁵ On September 9, 2002, prior to settling this billing dispute, NuVox conceded that, if BellSouth complied with their interconnection agreement, NuVox's concerns "would certainly be addressed."⁸⁴⁶ As we noted above, the parties have settled their billing dispute, which arguably

⁸⁴¹ KMC/NuVox Comments at 5; NewSouth August 5 *Ex Parte* Letter at 5. Although KMC and NuVox refer to "special access" rates throughout their comments, BellSouth treats these comments as if they refer to "switched dedicated access" rates. BellSouth Ruscilli/Cox Reply Aff. at para. 7. Neither KMC nor NuVox contends that BellSouth is incorrect. See also Letter from John J. Heitmann, Counsel to NuVox, to William Maher, Chief, Wireline Competition Bureau, Federal Communications Commission, *et al.* WC Docket No. 02-150 at 2, 3, 6 (filed Aug. 29, 2002) (NuVox August 29 *Ex Parte* Letter) (discussing the imposition of "tariffed access" rates).

⁸⁴² AT&T Comments at 26.

⁸⁴³ KMC/NuVox Comments at 5. See also NuVox August 29 *Ex Parte* Letter at 2; Letter from John J. Heitmann, Counsel to NuVox, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-150 at 1 (filed Sept. 9, 2002) (NuVox September 9 *Ex Parte* Letter). NewSouth makes a similar argument. See NewSouth August 5 *Ex Parte* Letter at 5 ("BellSouth charges tariffed access charges (federal and state) for all or portions of interconnection trunks that NewSouth orders from BellSouth."). It concedes, however, that its interconnection agreement with BellSouth provides for billing a percentage of interconnection trunks at tariffed rates. *Id.* NewSouth's contentions, therefore, relate to whether BellSouth is billing NewSouth in accordance with the interconnection agreement. This is a contractual dispute that should be resolved in the first instance by state commissions. See *Verizon Pennsylvania Order*, 16 FCC Rcd at 17484, para. 118; *Verizon New Jersey Order*, 17 FCC Rcd at 12354, para. 159.

⁸⁴⁴ Letter from Jonathan Banks, General Attorney, BellSouth, to Marlene H. Dortch, Federal Communications Commission, WC Docket No. 02-150 (filed Sept. 14, 2002) (BellSouth September 14 *Ex Parte* Letter).

⁸⁴⁵ *Id.* See also Letter from John J. Heitmann, Counsel to NuVox, to William Maher, Chief, Wireline Competition Bureau, Federal Communications Commission, WC Docket No. 02-150 at 1-2 n.1 (filed Sept. 16, 2002) (NuVox September 16 *Ex Parte* Letter).

⁸⁴⁶ NuVox September 9 *Ex Parte* Letter at 4. NuVox alleges that BellSouth has not abided by the terms of that agreement. *Id.*

resolves issues involving compliance with their interconnection agreement and therefore addresses NuVox's concerns as stated on September 9. However, NuVox and BellSouth each expressly reserved its rights to challenge the other party's legal or regulatory position concerning the appropriate charges for interconnection trunks and facilities.⁸⁴⁷ Indeed, NuVox and BellSouth continue to disagree concerning the proper pricing of interconnection trunks.⁸⁴⁸ Thus, we briefly address the parties' underlying claims below.

222. The dispute between BellSouth and NuVox primarily concerns the billing for a one-way trunk group that runs from NuVox to BellSouth that can carry all types of traffic.⁸⁴⁹ BellSouth uses factors to distinguish interstate from intrastate traffic, and to distinguish intrastate local traffic from intrastate intraLATA traffic carried on this trunk group. In particular, BellSouth requires NuVox (and other carriers) to report a Percent Interstate Usage (PIU) factor to identify the percentage of interstate traffic on interconnection trunks that deliver traffic to BellSouth.⁸⁵⁰ The remaining traffic is deemed to be intrastate.⁸⁵¹ According to BellSouth, under the terms of the BellSouth-NuVox interconnection agreement, all non-transit local intrastate traffic is billed according to bill-and-keep, and the remaining traffic is billed according to the appropriate access tariff.⁸⁵²

223. In order to distinguish the local intrastate traffic from other intrastate traffic, BellSouth requires NuVox (and other carriers) to report a Percent Local Facility (PLF).⁸⁵³ BellSouth concedes that the interconnection agreement with NuVox does not contain the PLF reporting requirement.⁸⁵⁴ By Carrier Notification Letter dated June 1, 2000, BellSouth informed competitive LECs that it would be imposing the PLF billing scheme.⁸⁵⁵ BellSouth justifies the

⁸⁴⁷ BellSouth September 14 *Ex Parte* Letter; NuVox September 16 *Ex Parte* Letter.

⁸⁴⁸ See, e.g., Letter from John J. Heitmann, Counsel to NuVox, to William Maher, Chief, Wireline Competition Bureau, Federal Communications Commission, *et al.*, WC Docket No. 02-150 at 2 (filed Sept. 13, 2002) (NuVox September 13 *Ex Parte* Letter); NuVox September 16 *Ex Parte* Letter at 1-2 n1.

⁸⁴⁹ Letter from Ernest Bush, BellSouth, to Marlene H. Dortch, Federal Communications Commission, WC Docket 02-150 at 1-2 (filed Sept. 13, 2002) (BellSouth September 13 *Ex Parte* Letter). This trunk group is a switched dedicated trunk group. *Id.* There is also a two-way transit trunk group that runs between NuVox and BellSouth, and a BellSouth one-way trunk group that runs from BellSouth to NuVox and carries intraLATA and local traffic. *Id.* To the extent that NuVox's arguments apply to BellSouth's pricing of transit trunks, we note that the Commission has not had occasion to determine whether incumbent LECs have a duty to provide transit service under section 251(c)(2), and we do not find clear Commission precedent or rules declaring such a duty. We therefore do not find a violation of checklist item 1 in connection with BellSouth's provision of transit trunks.

⁸⁵⁰ BellSouth September 13 *Ex Parte* Letter at 2; NuVox August 29 *Ex Parte* Letter Attach. A at 6 (defining PIU).

⁸⁵¹ BellSouth September 13 *Ex Parte* Letter at 2.

⁸⁵² *Id.* at 4.

⁸⁵³ *Id.*

⁸⁵⁴ *Id.*

⁸⁵⁵ *Id.*

imposition of the PLF by stating that, because the rates, terms, and conditions of the BellSouth-NuVox interconnection agreement apply only to local interconnection, "it is necessary to have an operational mechanism to separate the local and the access portion of the facilities."⁸⁵⁶ BellSouth adds that requiring the reporting of a PLF "represent[s] the logical means by which the parties can implement the intent of the [a]greement, namely that the rates, terms and conditions of the [a]greement apply only to local interconnection."⁸⁵⁷ BellSouth uses the PLF to charge access charges for the portions of the interconnection trunks carrying interexchange traffic. According to BellSouth, its "longstanding policy on this issue has never been challenged in an arbitration (or a complaint proceeding) in any of BellSouth's nine states."⁸⁵⁸ We note that this policy was not challenged in the *BellSouth Georgia/Louisiana* section 271 proceeding before this Commission.

224. NuVox focuses its argument on the application of the PLF to interconnection facilities. NuVox argues that, while BellSouth is entitled to charge access rates for certain types of traffic, BellSouth's rates for the interconnection trunks that carry any traffic must be cost-based.⁸⁵⁹ NuVox points out that sections 251(c)(2) and 252(d)(1) of the Act require incumbent LECs, such as BellSouth, to provide cost-based interconnection trunks and facilities "for the transmission and routing of telephone exchange service and exchange access."⁸⁶⁰

225. NuVox and BellSouth differ markedly in how the Commission's interpretations of sections 251(c)(2) and 252(d)(1) apply to their relationship.⁸⁶¹ NuVox argues that the only type of carrier not entitled to cost-based interconnection is one that is exclusively an IXC requesting interconnection only for the purpose of originating or terminating its interexchange traffic.⁸⁶² NuVox states that it provides both telephone exchange service and exchange access service over the one-way trunk and is thus "clearly entitled to cost-based interconnection under the Act and the Commission's rules."⁸⁶³ In making this argument, Nuvox relies on the Commission's statement in the *Local Competition Order* "that an IXC that requests interconnection solely for the purpose of originating or terminating its *interexchange* traffic, not for the provision of telephone exchange service and exchange access to others, on an incumbent

⁸⁵⁶ *Id.*

⁸⁵⁷ *Id.* at 5.

⁸⁵⁸ *Id.* at 8.

⁸⁵⁹ NuVox September 9 *Ex Parte* Letter at 1-2.

⁸⁶⁰ 47 U.S.C. §§ 251(c)(2), 252(d)(1). This requirement is incorporated in checklist item 1. *See id.* § 271(c)(2)(B)(i).

⁸⁶¹ *See, e.g.*, NuVox September 16 *Ex Parte* Letter at 5-6.

⁸⁶² NuVox August 29 *Ex Parte* Letter at 11.

⁸⁶³ KMC/NuVox Comments at 7.

LEC's network is not entitled to receive interconnection pursuant to section 251(c)(2).⁸⁶⁴ NuVox contends that it provides both telephone exchange and exchange access services to its end users and that it therefore is not requesting interconnection "solely for the purpose of originating and terminating its interexchange traffic" when it delivers to BellSouth local and toll traffic originated by NuVox's end user customers.⁸⁶⁵

226. BellSouth, however, contends that the Act and Commission rules authorize its practice of pricing interconnection trunks according to the traffic that is carried on them. It argues that it is entitled to impose access charges for the portion of interconnection facilities that carries non-local traffic.⁸⁶⁶ BellSouth relies on language in the *Local Competition Order* that preserves the distinction between interconnection under section 251(c)(2) and access charges.⁸⁶⁷ In particular, the *Local Competition Order* states that "access charges are not affected by our rules implementing section 251(c)(2),"⁸⁶⁸ and also notes that "access charges are not implicated by the Commission's decisions regarding whether parties who seek to interconnect solely for the purpose of originating or terminating interexchange traffic on the incumbent's network are entitled to obtain interconnection pursuant to section 252(c)(2)."⁸⁶⁹ BellSouth notes that this distinction was upheld in *Competitive Telecommunications Ass'n v. FCC*, where the U.S. Court of Appeals for the Eighth Circuit stated that "LECs will continue to provide exchange access to IXC's for long-distance service, and continue to receive payment, under the pre-Act regulations and rates."⁸⁷⁰

227. The issue presented by NuVox and BellSouth is whether access charges may be imposed for interconnection facilities to the extent that they are used to carry interexchange traffic, including interexchange traffic originated by end users to whom a competitive LEC also provides telephone exchange service. The Commission has never squarely addressed this issue, and no party has sought arbitration of the issue with BellSouth.⁸⁷¹ In accordance with prior section 271 orders, "new interpretive disputes concerning the precise content of an incumbent LEC's obligations to its competitors, disputes that our rules have not yet addressed and that do

⁸⁶⁴ *Local Competition Order*, 11 FCC Rcd at 15598, para. 191 (original emphasis).

⁸⁶⁵ KMC/NuVox Comments at 6-7; NuVox August 29 *Ex Parte* Letter at 5, 11-12. See also NuVox September 16 *Ex Parte* Letter at 5.

⁸⁶⁶ BellSouth September 13 *Ex Parte* Letter at 5-7.

⁸⁶⁷ See *id.* at 5-6.

⁸⁶⁸ See *Local Competition Order*, 11 FCC Rcd at 15590, para. 176.

⁸⁶⁹ *Id.* at 15598, para. 191 n.398.

⁸⁷⁰ BellSouth September 13 *Ex Parte* Letter at 6 (quoting *Competitive Telecommunications Ass'n v. FCC*, 117 F.3d 1068, 1073 (8th Cir. 1997) (*CompTel*)). In the *CompTel* case, IXCs had argued that LEC-provided interstate access services fell within the scope of "interconnection" under section 251(c)(2) and that, therefore, access charges should be governed by the cost-based standard of section 252(d)(1). See *CompTel*, 117 F.3d at 1071.

⁸⁷¹ BellSouth September 13 *Ex Parte* Letter at 8.

not involve *per se* violations of the Act or our rules, are not appropriately dealt with in the context of a section 271 proceeding.⁸⁷² We therefore decline to find a violation of checklist item 1 based on the existence of this interpretive dispute between BellSouth and NuVox. Of course, in the event that the Commission issues a ruling on the matters raised by the dispute between BellSouth and NuVox, then BellSouth must comply with the ruling or be subject to enforcement action by the Commission.

228. AT&T also alleges that BellSouth does not comply with checklist item 1. BellSouth allegedly denies AT&T and other competitive LECs “the practical ability, currently enjoyed by BellSouth, to define the scope of their local calling areas and to exchange local traffic with BellSouth based on the CLEC’s definition, rather than BellSouth’s definition, of the local calling area.”⁸⁷³ BellSouth implements this practice “by insisting that AT&T and other CLECs compensate BellSouth at switched access rates for any intraLATA calls that originate or terminate outside the local calling area as BellSouth has defined it.”⁸⁷⁴ AT&T alleges that BellSouth refuses to accept the higher PLF that results from AT&T’s offer of LATA-wide local calling.⁸⁷⁵ As a result, although AT&T provides local service to customers on a LATA-wide basis, “AT&T is being forced to compensate BellSouth at switched access rather than reciprocal compensation rates for that portion of the traffic that originates or terminates outside the BellSouth-defined calling area.”⁸⁷⁶

229. As a regulatory matter, telecommunications traffic subject to reciprocal compensation under section 251(b)(5) excludes, *inter alia*, “traffic that is interstate or intrastate exchange access.”⁸⁷⁷ In the *Local Competition Order*, the Commission concluded that state commissions have the authority to determine whether calls passing between LECs should be subject to access charges or reciprocal compensation for those areas where LECs’ service areas do not overlap.⁸⁷⁸ Accordingly, we reject AT&T’s request that we modify any state

⁸⁷² *Verizon Pennsylvania Order*, 16 FCC Rcd at 17470, para. 92; *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9075, para. 114; *SWBT Texas Order*, 15 FCC Rcd at 18366, para. 24; *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6246, para. 19.

⁸⁷³ AT&T Comments at 26; *see also* AT&T August 23 Pricing and Growth Tariff *Ex Parte* Letter at 8-9 (“Nowhere [in BellSouth’s Reply] does [BellSouth] deny that it is free to define the scope of its own local calling areas, or that it has taken advantage of this freedom by offering extended-area service plans to customers throughout its region.”).

⁸⁷⁴ *Id.* at 28.

⁸⁷⁵ *Id.*

⁸⁷⁶ *Id.*

⁸⁷⁷ 47 C.F.R. § 51.701(b)(1).

⁸⁷⁸ *Local Competition Order*, 12 FCC Rcd at 16013, para. 1035.

commission's distinction between those calls subject to access charges and those subject to reciprocal compensation.⁸⁷⁹

230. In any event, as AT&T itself recognizes, the interconnection agreement between AT&T and BellSouth expressly covers the LATA-wide calling issue.⁸⁸⁰ Indeed, AT&T's principal complaint is that "BellSouth refuses to perform *according to the terms in its interconnection agreements*."⁸⁸¹ Interpretive disputes concerning interconnection agreements are for the state commissions to decide in the first instance, and this Commission will not normally preempt a state commission's decisionmaking process.⁸⁸²

231. For the foregoing reasons, we reject commenters' allegations of error and find that BellSouth complies with checklist item 1.

B. Checklist Item 4 - Unbundled Local Loops

232. Section 271(c)(2)(B)(iv) of the Act requires that a BOC provide "[l]ocal loop transmission from the central office to the customer's premises, unbundled from local switching or other services."⁸⁸³ Based on the evidence in the record, we conclude, as did the state commissions,⁸⁸⁴ that BellSouth demonstrates that it provides unbundled local loops in accordance

⁸⁷⁹ AT&T Comments at 28. AT&T also asserts that "nothing in the *Virginia Arbitration Order* established that ILECs may deny CLECs equal flexibility to define their local calling areas." AT&T August 23 Pricing and Growth Tariff *Ex Parte* Letter at 9 (citing *In the Matter of Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration*, CC Docket Nos. 00-218, 00-249, and 00-251, Memorandum Opinion and Order, DA 02-1731 (rel. July 15, 2002) (*Virginia Arbitration Order*). Consistent with the *Local Competition Order*, however, the definition of a local calling area is the prerogative of a state commission. *Local Competition Order*, 12 FCC Rcd at 16013, para. 1035.

⁸⁸⁰ AT&T Comments App., Ex. A, Declaration of Denise Berger (AT&T Berger Decl.) at paras. 9-11.

⁸⁸¹ *Id.* at para. 15 (emphasis added). AT&T states that this is not an interconnection agreement dispute because of BellSouth's belief that "CLEC[s] do not have a right to LATA-wide calling." AT&T August 23 Pricing and Growth Tariff *Ex Parte* Letter at 10 (citation omitted). We believe that a more accurate characterization of the issue is whether state commissions have the authority to define the local calling area as they see fit. See *Local Competition Order*, 12 FCC Rcd at 16013, para. 1035.

⁸⁸² *Verizon Pennsylvania Order*, 16 FCC Rcd at 17484, para. 118; *Verizon New Jersey Order*, 17 FCC Rcd at 12354, para. 159.

⁸⁸³ 47 U.S.C. § 271(c)(2)(B)(iv). The Commission has defined the loop as a transmission facility between a distribution frame, or its equivalent, in an incumbent LEC central office, and the demarcation point at the customer premises. Dark fiber and loop conditioning equipment are among the features, functions, and capabilities of the loop. *UNE Remand Order*, 15 FCC Rcd at 3772-73, paras. 166-67 n.301. For a discussion of the requirements of checklist item 4, see Appendix H at paras. 48-52, *infra*.

⁸⁸⁴ See Alabama Commission Comments at 211; Kentucky Commission Comments at 31, 41; Mississippi Commission Comments at 3; North Carolina Commission Comments at 206; South Carolina Commission Comments at 1.

with the requirements of section 271 and our rules. As in past section 271 orders, our conclusion is based on our review of BellSouth's performance for all loop types, including voice grade loops, xDSL-capable loops, high capacity loops, and digital loops, as well as our review of BellSouth's hot cut, line-sharing, and line splitting processes. We note that, as of June 30, 2002, BellSouth states that it had provisioned 15,913 loops in Alabama, 3,841 loops in Kentucky, 6,258 loops in Mississippi, 51,229 loops in North Carolina, and 14,901 loops in South Carolina.⁸⁸⁵

233. Consistent with our prior section 271 orders, we do not address aspects of BellSouth's loop performance where our review of the record satisfies us that BellSouth's performance complies with the parity and benchmark measures established in the relevant states.⁸⁸⁶ Instead, we focus our discussion on those areas where the record indicates discrepancies between BellSouth's performance for its competitors and BellSouth's performance for its own retail operations. As in past section 271 proceedings in the course of our review, we look for patterns of systemic performance disparities that have resulted in competitive harm or that otherwise have denied new entrants a meaningful opportunity to compete.⁸⁸⁷ Where BellSouth's competitive LEC volumes in a particular state are too small to provide a meaningful assessment of BellSouth's loop-provisioning capabilities, we look to BellSouth's recent performance in Georgia to help us determine whether BellSouth meets this checklist item.⁸⁸⁸

234. *Hot Cut Activity.* Like the state commissions,⁸⁸⁹ we find that BellSouth is providing voice grade loops through hot cuts in each state in accordance with the requirements of checklist item 4.⁸⁹⁰ BellSouth provides hot cuts in each of the states within reasonable time intervals,⁸⁹¹ at an acceptable level of quality, with minimal service disruption, and with a minimum number of troubles following installation.⁸⁹²

⁸⁸⁵ See BellSouth August 14 OSS and Loops *Ex Parte* Letter at 3.

⁸⁸⁶ See, e.g., *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9144, para. 219; *Verizon Connecticut Order*, 16 FCC Rcd at 14151-52, para. 9.

⁸⁸⁷ See, e.g., *Verizon Massachusetts Order*, 16 FCC Rcd at 9055-56, para. 122.

⁸⁸⁸ See *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6254, paras. 36-37 (determining that recent data regarding SWBT's performance in Texas provides a reliable indicator of SWBT's performance in Kansas and Oklahoma).

⁸⁸⁹ See Alabama Commission Comments at 204; Kentucky Commission Comments at 32; Mississippi Commission Comments at 3; North Carolina Commission Comments at 197; South Carolina Commission Comments at 1.

⁸⁹⁰ A hot cut is the process of converting a customer from one network, usually a UNE-platform served by an incumbent LEC's switch, to a UNE-loop served by another carrier's switch. The "cut" is said to be "hot" because telephone service on the specific customer's loop is interrupted for a brief period of time during the conversion process. *Bell Atlantic New York Order*, 15 FCC Rcd 3953, 4104, para. 291 n.925.

⁸⁹¹ See Alabama/Kentucky/Mississippi/North Carolina/South Carolina B.2.12.1-B.2.12.2 (Coordinated Customer Conversions); Alabama/Kentucky/Mississippi/North Carolina/South Carolina B.2.13.1-B.2.13.4 (% Hot Cuts>15 (continued....))

235. *Voice Grade Loops.* We find, as did the state commissions,⁸⁹³ that BellSouth provisions voice grade loops to competitors in a nondiscriminatory manner. BellSouth met the benchmark and parity standards for installation timeliness,⁸⁹⁴ installation quality,⁸⁹⁵ and maintenance and repair timeliness and quality with regard to voice grade loops in each of the states in each relevant month, with minor exceptions.⁸⁹⁶ These exceptions are relatively slight and are not competitively significant to competitive LECs.⁸⁹⁷ We therefore find that these exceptions do not warrant a finding of checklist noncompliance.

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Minutes Early); Alabama/Kentucky/Mississippi/North Carolina/South Carolina B.2.14.1-B.2.14.4 (Hot Cut Timeliness); Alabama/Kentucky/Mississippi/North Carolina/South Carolina B.2.15.1-B.2.15.4 (% Hot Cuts>15 Minutes Late); Alabama/Kentucky/Mississippi/North Carolina/South Carolina B.2.16.1-B.2.16.2 (Average Recovery Time – CCC). *But see* KMC Comments at 10 (alleging that BellSouth's hot cut coordination is substandard).

⁸⁹² See Alabama/Kentucky/Mississippi/North Carolina/South Carolina B.2.17.1.1-B.2.17.2.2 (% Provisioning Troubles within 7 Days – Hot Cuts). We note that, while BellSouth failed to meet one of these benchmarks during June in South Carolina, it exceeded that benchmark on average during March through June in South Carolina. See South Carolina B.2.17.1.1 (% Provisioning Troubles within 7 Days, Hot Cuts, UNE Loop Design/Dispatch). We therefore find that the disparity in June does not rise to the level of checklist noncompliance. We also note that although BellSouth's volumes were low for certain hot cut measures in the applicable states, BellSouth's hot cut performance in Georgia raises no issues regarding checklist compliance. See Georgia B.2.12.1-B.2.17.2.2 (Hot Cut Provisioning).

⁸⁹³ See Alabama Commission Comments at 211; Kentucky Commission Comments at 31, 41; Mississippi Commission Comments at 3; North Carolina Commission Comments at 190; South Carolina Commission Comments at 1.

⁸⁹⁴ See Alabama/Kentucky/Mississippi/North Carolina/South Carolina B.1.9.8.-B.1.9.13, B.1.12.8-B.1.1.12.13, B.1.13.8-B.1.13.13 (FOC Timeliness, 2 Wire Analog Loops); Alabama/Kentucky/Mississippi/North Carolina/South Carolina B.2.1.8.1.1-B.2.1.13.2.4 (Order Completion Interval, 2 Wire Analog Loops); Alabama/Kentucky/Mississippi/North Carolina/South Carolina B.2.18.8.1.1-B.2.18.13.2.4 (% Missed Installation Appointments, 2 Wire Analog Loops).

⁸⁹⁵ See Kentucky/Mississippi/North Carolina/South Carolina B.2.19.8.1.1-B.2.19.13.2.4 (% Provisioning Troubles within 30 Days, 2 Wire Analog Loops); Alabama B.2.19.8.1.2-B.2.19.13.2.4 (% Provisioning Troubles within 30 Days, 2 Wire Analog Loops); Alabama/Kentucky/Mississippi B.3.2.8.1-B.3.2.9.2 (Customer Trouble Report Rate, 2 Wire Analog Loops).

⁸⁹⁶ See Alabama/Kentucky/Mississippi/North Carolina/South Carolina B.3.1.8.1-B.3.1.9.2 (% Missed Repair Appointments, 2 Wire Analog Loops); Alabama/Kentucky/Mississippi/North Carolina/South Carolina B.3.3.8.1-B.3.3.9.2 (Maintenance Average Duration, 2 Wire Analog Loops); Alabama/Kentucky/Mississippi/North Carolina/South Carolina B.3.3.8.1-B.3.3.9.2 (% Repeat Troubles within 30 Days, 2 Wire Analog Loops).

⁸⁹⁷ See Alabama B.3.1.8.1 (Missed Repair Appointments, 2 Wire Analog Loops, Design/Dispatch) (out of parity in June with a 11.54% trouble report rate for competitive LECs and a 6.79% trouble report rate for BellSouth's retail operations, but a 4.50% overall trouble report rate for competitive LECs and a 6.30% overall trouble report rate for BellSouth's retail operations during March through June); South Carolina B.3.2.9.1 (Customer Trouble Report Rate, 2 Wire Analog Loops, Non-Design/Dispatch) (out of parity in two months with a 4.38% trouble report rate during March and a 7.05% trouble report rate during April for competitive LECs and a 1.60% trouble report rate during March and a 1.82% trouble report rate during April for BellSouth's retail operations, but a 4.13% overall trouble report rate for competitive LECs and a 1.83% overall trouble report rate for BellSouth's retail operations (continued....)

236. *xDSL-Capable Loops*. We find, as did the state commissions,⁸⁹⁸ that BellSouth demonstrates that it provides stand-alone xDSL-capable loops in accordance with checklist item 4. BellSouth's performance with respect to the percentage of provisioning troubles within 30 days, a metric that measures installation quality, appears to be out of parity in Kentucky, Mississippi, North Carolina, and South Carolina for recent months.⁸⁹⁹ We find, however, that this performance does not warrant a finding of checklist noncompliance in view of the low number of installation troubles reported in each of the five states. We recognize, as we have in prior section 271 orders, that a small handful of observations can cause seemingly large variations in the performance measures.⁹⁰⁰ Moreover, given BellSouth's parity of performance with respect to this metric in Georgia for the relevant period, we find that BellSouth provisions xDSL loops in a nondiscriminatory manner in all five states.⁹⁰¹ Next, we note that BellSouth's

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from March through June); Georgia B.1.12.12 (FOC Timeliness, Partially Mechanized, 2 Wire Analog Loops with LNP, Design) (under benchmark requiring that BellSouth provide firm order confirmations within 10 hours at least 85% of the time, out of parity in May with an 83.41% score and June with a 78.71% score, but 86.13% overall average during March through June); Georgia B.2.1.13.1.4 (Order Completion Interval, 2 Wire Analog Loops with LNP/Non-Design/<10 Circuits/Dispatch) (out of parity from March through June with average intervals of 4.90 days for competitive LECs and 1.56 days for BellSouth's retail operations; competitive LEC volume of 54 orders represents only about 5.15% of total voice grade loops that competitive LECs ordered for Georgia during the same period). We consider these data for Georgia because BellSouth volumes under these metrics were low in certain of the applicable states. *See, e.g.,* Kentucky B.1.12.12 (FOC Timeliness, Partially Mechanized, 2 Wire Analog Loops with LNP, Design); Kentucky B.2.1.13.1.4 (Order Completion Interval, 2 Wire Analog Loops with LNP/Non-Design/<10 Circuits/Dispatch).

⁸⁹⁸ *See* Alabama Commission Comments at 211; Kentucky Commission Comments at 31, 41; Mississippi Commission Comments at 3; North Carolina Commission Comments at 192; South Carolina Commission Comments at 1.

⁸⁹⁹ Specifically, BellSouth's performance data show that it was out of parity in Kentucky, Mississippi, North Carolina, and South Carolina in April, and missed parity in North Carolina in May and South Carolina in March. In Mississippi, BellSouth's performance data show that competitive LECs experience an average of 7.01% trouble reports within 30 days after installation of an xDSL loop, compared to an average of 3.14% for BellSouth retail operations from March through June. In North Carolina, competitive LECs experience an average of 8.15%, compared to an average of 3.09% for BellSouth retail. *See* Mississippi/North Carolina B.2.19.5.1.1 (% Provisioning Troubles within 30 Days, ADSL, HDSL and UCL<10 Circuits/Dispatch). We note that BellSouth's performance data is based on low volumes in Kentucky and South Carolina. Further, there are no volumes reported for BellSouth retail operations in Kentucky in March, May, and June. In Kentucky, competitive LECs experience an average of 5.26% provisioning trouble reports within 30 days, compared to an average of 0.00%, while in South Carolina competitors experience an average of 13.04% trouble reports within 30 days, compared to an average of 3.05% for BellSouth retail operations. *See* Kentucky/South Carolina B.2.19.5.1.1 (% Provisioning Troubles within 30 Days, ADSL, HDSL and UCL<10 Circuits/Dispatch).

⁹⁰⁰ *See Verizon Massachusetts Order*, 16 FCC Rcd at 8988, para. 93 n.296. BellSouth's installation quality performance data show that competitive LECs volumes were, on average, 44 in Alabama, 10 in Kentucky, 39 in Mississippi, 58 in North Carolina, and 6 in South Carolina during the relevant period. *See* Alabama/Kentucky/Mississippi/North Carolina/South Carolina B.2.19.5.1.1 (% Provisioning Troubles within 30 Days, ADSL, HDSL and UCL<10 Circuits/Dispatch).

⁹⁰¹ In Georgia, BellSouth's performance data show that it achieved parity for this metric for all months during the relevant period. *See* Georgia B.2.19.5.1.1 (% Provisioning Troubles within 30 Days, ADSL, HDSL and UCL<10 Circuits/Dispatch).

order processing timeliness performance was slightly out of parity in Kentucky, Mississippi, and North Carolina on a few occasions.⁹⁰² We find that these performance discrepancies are slight, episodic, and do not appear to be competitively significant.

237. Covad alleges that its own data show that BellSouth's UCL-ND order completion interval,⁹⁰³ installation quality,⁹⁰⁴ and maintenance average duration⁹⁰⁵ performance demonstrates discriminatory treatment.⁹⁰⁶ BellSouth, however, contends that its performance with respect to this type of loop has been excellent and that it installs UCL-ND loops in a timely manner.⁹⁰⁷ We find that Covad-specific data is outweighed by evidence of BellSouth's overall performance. As in prior section 271 orders, performance data relative to competitive LECs on an aggregate basis is the most persuasive evidence of whether a BOC meets the checklist requirements.⁹⁰⁸ BellSouth's performance data demonstrate that BellSouth met or exceeded the parity standard for the order completion interval.⁹⁰⁹ In addition, BellSouth's maintenance and repair performance, which measures the timeliness and quality of the maintenance and repair functions,

⁹⁰² BellSouth met the vast majority of its order processing timeliness benchmarks. In Kentucky, BellSouth missed the benchmark (95% within 3 hours) for mechanized orders in March. However, competitive LECs experience an average of 97.20% within 3 hours for the relevant period. See Kentucky B.1.9.5 (FOC Timeliness, Mechanized, ADSL, HDSL and UCL). For partially mechanized orders in Mississippi and North Carolina, BellSouth missed the benchmark (85% within 10 hours) in March and May, respectively. In Mississippi, competitive LECs experience an average of 90.60% within 10 hours, and in North Carolina competitive LECs experience an average of 88.57% within 10 hours. See Mississippi/North Carolina B.1.12.5 (FOC Timeliness, Partially Mechanized, ADSL, HDSL and UCL).

⁹⁰³ Covad contends that for orders of this loop requiring dispatch, BellSouth completed orders for its own customers one day faster than Covad's orders in North Carolina, two days faster in Alabama, and five days faster in Kentucky. Covad Comments at 27.

⁹⁰⁴ Covad maintains that BellSouth failed to properly provision 38 of 50 UCL-ND orders in Florida in January 2002. Covad Comments at 24.

⁹⁰⁵ Specifically, Covad states that in Alabama for UCL-ND loops not requiring dispatch, BellSouth fixed problems for its own customers in 8.10 hours, while taking 24 hours to get Covad's customers back to service. Covad Comments at 29-30.

⁹⁰⁶ See generally Covad Comments at 22-31. In fact, Covad contends that BellSouth's provisioning problems with the UCL-ND loop have been so bad that Covad was forced to stop ordering the loop entirely in every state in the BellSouth region except Florida. *Id.* at 23.

⁹⁰⁷ BellSouth Reply Comments at 55; BellSouth Varner Reply Aff. at paras. 117, 120. Concerning Covad's claim that BellSouth provides retail customers faster repair services on average than it provides for Covad's UCL-ND orders, BellSouth states that Covad fails to note the differences in sample size and the effect even a single "miss" can have on the reported performance for the competitive LEC product. *Id.*

⁹⁰⁸ See, e.g., *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9148, para. 226.

⁹⁰⁹ See Alabama/Kentucky/Mississippi/North Carolina/South Carolina B.2.2.2 (Order Completion Interval within 7 Days, ADSL, HDSL and UCL/Loop without Conditioning<6 Circuits/Dispatch).

has shown parity during the relevant period.⁹¹⁰ Moreover, as discussed above, we find that BellSouth provisions xDSL-capable loops of a quality sufficient to afford competitors a meaningful opportunity to compete. Thus, although Covad claims that its data show discriminatory performance, allegedly anomalous results for a single carrier in this instance do not qualify as a pattern of systemic performance disparities that result in competitive harm.⁹¹¹

238. *UNE ISDN Loops.* Like the state commissions,⁹¹² we find that BellSouth provides ISDN loops to competitors in a nondiscriminatory manner. BellSouth's performance under the order completion interval and the percentage missed installation appointment submetrics shows that BellSouth has been timely in the provisioning of ISDN loops.⁹¹³ Further, BellSouth's performance data demonstrate that it generally met the parity standard for the percentage of provisioning troubles within 30 days (dispatch) of installation metric.⁹¹⁴

239. BellSouth's data, however, reveal some performance issues with respect to the maintenance and repair of ISDN loops. Specifically, while BellSouth met or exceeded the parity standard for metrics measuring the percentage of missed repairs, maintenance average duration,

⁹¹⁰ BellSouth met or exceeded parity with respect to the percentage of missed repair appointments, customer trouble report rate, and maintenance average duration metrics in each of the states during the relevant period. See Alabama/Kentucky/Mississippi/North Carolina/South Carolina B.3.1.5.1-B.3.1.5.2 (% Missed Repair Appointments, ADSL, HDSL and UCL/Dispatch and Non-Dispatch); B.3.2.5.1-B.3.2.5.2 (Customer Trouble Report Rate, ADSL, HDSL and UCL/Dispatch and Non-Dispatch); B.3.3.5.1-B.3.3.5.2 (Maintenance Average Duration, ADSL, HDSL and UCL/Dispatch and Non-Dispatch). BellSouth met the standard for repeat troubles within 30 days, with two minor exceptions. See South Carolina B.3.4.5.2 (% Repeat Troubles within 30 Days, ADSL, HDSL and UCL/Non-Dispatch). BellSouth missed this metric in April and June.

⁹¹¹ If evidence becomes available to the Commission in the future sufficient to show systemic performance disparities, we will pursue appropriate enforcement action.

⁹¹² See Alabama Commission Comments at 211; Kentucky Commission Comments at 31, 41; Mississippi Commission Comments at 3; North Carolina Commission Comments at 192; South Carolina Commission Comments at 1.

⁹¹³ BellSouth met the benchmark for installation timeliness and missed installation appointments for each month in all five states during the relevant period. See Alabama/Kentucky/Mississippi/North Carolina/South Carolina B.2.1.6.3.1 (Order Completion Interval, UNE ISDN<6 Circuits/Dispatch); Alabama/Kentucky/Mississippi/North Carolina/South Carolina B.2.18.6.1.1 (% Missed Installation Appointments, UNE ISDN<10 Circuits/Dispatch).

⁹¹⁴ BellSouth's performance data show that it provides an installation quality sufficient to afford competitors a meaningful opportunity to compete. See Alabama/Kentucky/Mississippi/North Carolina/South Carolina B.2.19.6.1.1 (% Provisioning Troubles within 30 Days, UNE ISDN<10 Circuits/Dispatch). However, BellSouth missed one month in Kentucky and two months in North Carolina. In Kentucky, competitive LECs experienced an average of 8.00% provisioning troubles within 30 days of installation, compared to 6.79% for BellSouth retail operations. See Kentucky B.2.19.6.1.1 (% Provisioning Troubles within 30 Days, UNE ISDN<10 Circuits/Dispatch). In North Carolina, competitors experienced an average of 8.22% compared to 5.82% for BellSouth retail for the same period. See North Carolina B.2.19.6.1.1 (% Provisioning Troubles within 30 Days, UNE ISDN<10 Circuits/Dispatch). We find, however, that BellSouth's overall performance for this metric show that BellSouth provides competitors with sufficient installation quality.

and the percentage of repeat troubles with few minor exceptions,⁹¹⁵ BellSouth was out of parity with the customer trouble report rate for several months in each of the five states.⁹¹⁶ We do not find, however, that these performance discrepancies are competitively significant. Further, we note that no commenter has commented on BellSouth's ISDN loop performance with respect to this metric. Accordingly, in light of BellSouth's competitive carrier ISDN loop record overall, we do not find that BellSouth's performance demonstrates that it fails to meet the requirements of checklist item 4.

240. *Digital Loops.* We find, as did the state commissions,⁹¹⁷ that BellSouth's performance with respect to digital loops complies with checklist item 4. BellSouth's performance in this area generally met the parity standards established by the state commissions for installation timeliness.⁹¹⁸ We recognize, however, that BellSouth's performance in North

⁹¹⁵ Specifically, BellSouth's missed repair appointment performance (dispatch) was out of parity for two months in North Carolina and one month in South Carolina during the relevant period. See North Carolina/South Carolina B.3.1.6.1 (% Missed Repair Appointments, UNE ISDN/Dispatch). In North Carolina, competitive carriers experienced an average of 1.19% missed repair appointments compared to 1.03% for BellSouth retail operations from March through June. In South Carolina, competitors experienced an average of 7.14% compared to 3.09% for BellSouth retail for the same period. *Id.* In Alabama, BellSouth was only out of parity in May for non-dispatch loops. See Alabama B.3.1.6.2 (% Missed Repair Appointments, UNE ISDN/Non-Dispatch). BellSouth's maintenance average duration (dispatch) was only out of parity for one month in South Carolina. See South Carolina B.3.3.6.1 (Maintenance Average Duration, UNE ISDN/Dispatch). BellSouth performance data show that it was out of parity for one month in Alabama and South Carolina for maintenance average duration (non-dispatch). In North Carolina, BellSouth missed parity for two months, and competitive carriers experience an average of 2.75% misses compared to an average of 1.73% for BellSouth's retail operations for the relevant period. See Alabama/North Carolina/South Carolina B.3.3.6.2 (Maintenance Average Duration, UNE ISDN/Non-Dispatch). BellSouth was also slightly out of parity for the percentage of repeat troubles within 30 days metric. However, BellSouth's performance data for this metric show that BellSouth was out of parity for one month in Alabama (dispatch), and one month in Mississippi and North Carolina (non-dispatch). See Alabama B.3.4.6.1 (% Repeat Troubles within 30 Days, UNE ISDN/Dispatch); Mississippi/North Carolina B.3.4.6.2 (% Repeat Troubles within 30 Days, UNE ISDN/Non-Dispatch). Should BellSouth's performance in this area deteriorate, we will pursue appropriate enforcement action.

⁹¹⁶ Specifically, BellSouth's customer trouble report rate (dispatch) was out of parity for one month in South Carolina, two months in Alabama and Kentucky, three months in Mississippi, and four months in North Carolina. See Alabama/Kentucky/Mississippi/North Carolina/South Carolina B.3.2.6.1 (Customer Trouble Report Rate, UNE ISDN/Dispatch). In Mississippi, competitive carriers experienced an average of 1.33% dispatch trouble reports compared to an average of 0.61% for BellSouth retail operations for the relevant period. In North Carolina, competitors experienced an average of 1.18% dispatch trouble reports compared to an average of 0.64% for BellSouth retail. See Mississippi/North Carolina B.3.2.6.1 (Customer Trouble Report Rate, UNE ISDN/Dispatch). BellSouth's customer trouble report rate (non-dispatch) performance data show that BellSouth was in parity for all months reported. See Alabama/Kentucky/Mississippi/North Carolina/South Carolina B.3.2.6.2 (Customer Trouble Report Rate, UNE ISDN/Non-Dispatch).

⁹¹⁷ See Alabama Commission Comments at 211; Kentucky Commission Comments at 31, 41; Mississippi Commission Comments at 3; North Carolina Commission Comments at 192; South Carolina Commission Comments at 1.

⁹¹⁸ See Kentucky/Mississippi/South Carolina B.2.1.18.1.1 (Order Competition Interval, Digital Loops<DS1/<10 Circuits/Dispatch); Kentucky/Mississippi/North Carolina/South Carolina B.2.1.18.1.2-B.2.1.18.2.2 (Order (continued...))

Carolina with respect to an installation timeliness measure – the order completion interval metric (dispatch) – was out of parity for March through June.⁹¹⁹ The record shows, however, that no facilities were available for a disproportionate percentage of the competitive LEC orders reflected in this metric and that completing these orders required BellSouth to dispatch technicians to provision new loops.⁹²⁰ We find that BellSouth reasonably assigned these orders longer intervals than it assigned to orders that did not involve the dispatch of technicians. Because the retail orders reflected in this metric typically did not involve the dispatch of technicians, we also find that the disparity in BellSouth's performance under this metric does not raise an issue of checklist noncompliance.⁹²¹ In addition, the data for the other installation timeliness metric – percent missed installation appointments – show that BellSouth missed no installation appointments for competitive LECs during the relevant period in North Carolina.⁹²² In these circumstances, we conclude that BellSouth's performance under this order completion interval metric has not denied competitive LECs a meaningful opportunity to compete in North Carolina.

241. We reject KMC's argument that BellSouth's provisioning and maintenance and repair performance for digital loops preclude a finding of checklist compliance.⁹²³ BellSouth's installation quality measure for digital loops – the percentage of provisioning troubles within 30 days – was out of parity for certain months in Kentucky, Mississippi, North Carolina, and South Carolina.⁹²⁴ The record shows, however, that BellSouth has implemented several initiatives to

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Competition Interval, Other Digital Loops<DS1>; Alabama/Kentucky/Mississippi/North Carolina/South Carolina B.2.18.18.1-B.2.18.18.2.2 (% Missed Installation Appointments, Digital Loops<DS1/<10 Circuits>).

⁹¹⁹ See North Carolina B.2.1.18.1.1 (Order Competition Interval, Digital Loops<DS1/<10 Circuits/Dispatch) (monthly averages ranging from 8.72 days to 9.69 days for competitive LECs and from 3.74 days to 5.51 days for BellSouth's retail operations).

⁹²⁰ BellSouth August 14 *Ex Parte* Letter at 3; BellSouth Varner Reply Aff. at para. 224.

⁹²¹ BellSouth August 14 *Ex Parte* Letter at 3.

⁹²² See BellSouth Varner Reply Aff. at para. 224; North Carolina B.2.18.18.1.1 (% Missed Installation Appointments, Digital Loops<DS1/<10 Circuits/Dispatch) (no missed installation appointments for competitive LECs from March through June, versus an overall 3.70 % missed installation appointment rate for BellSouth's retail operations during the same period).

⁹²³ KMC Comments at 15-16.

⁹²⁴ See Kentucky/Mississippi/North Carolina/South Carolina B.2.19.18.1.1 (% Provisioning Troubles within 30 Days, Digital Loops<DS1/<10 Circuits/Dispatch). Specifically, BellSouth was below parity for this metric for May in Kentucky (11.76% of installations for competitive LECs having troubles within 30 days, versus 1.25% for BellSouth's retail operations); for April in Mississippi (8.97% of installations for competitive LECs having troubles within 30 days, versus 3.29% for BellSouth's retail operations); for March through May in North Carolina (6.25%, 10.12%, and 10.14% of installations for competitive LECs having troubles within 30 days, versus 3.58%, 2.21%, and 3.52% for BellSouth's retail operations); and for March and April in South Carolina (15.63% and 9.43% of installations for competitive LECs having troubles within 30 days, versus 3.24% and 3.71% for BellSouth's retail operations). *Id.*

reduce provisioning troubles.⁹²⁵ These initiatives include working with competitive LECs to rectify any issues and concerns prior to completing a service order.⁹²⁶ In addition, at the competitive LEC's request, BellSouth will engage in cooperative testing to ensure that the loop being provisioned meets the relevant technical criteria.⁹²⁷ Given this evidence, and recognizing BellSouth's generally acceptable performance for other categories of loops, we find that BellSouth's performance under this installation quality metric does not warrant a finding of checklist noncompliance.

242. Similarly, although BellSouth's maintenance and repair performance for digital loops was generally in parity during the applicable period,⁹²⁸ one measure of that performance – the customer trouble report rate – was out of parity for the applicable states throughout much of the relevant period.⁹²⁹ Because the overall trouble report rate for digital loops that BellSouth provided competitive LECs was low during the relevant period,⁹³⁰ we find that these disparities lack competitive significance.⁹³¹ BellSouth also was out of parity with regard to another measure of maintenance and repair quality – maintenance average duration – during certain months in Alabama, Mississippi, North Carolina, and South Carolina.⁹³² However, BellSouth's overall

⁹²⁵ See BellSouth August 14 OSS and Loops *Ex Parte* Letter at 4.

⁹²⁶ BellSouth Ainsworth Aff. at para. 139.

⁹²⁷ *Id.*

⁹²⁸ See BellSouth August 14 OSS and Loops *Ex Parte* Letter at 9, 11-14, 21, 23-27, 29-32 (discussing % Missed Repair Appointments, Maintenance Average Duration, and % Repeat Troubles within 30 Days, Digital Loops). We note that while BellSouth has provided disaggregated maintenance and repair data for digital loops, no metrics have been established for these data.

⁹²⁹ See BellSouth August 14 OSS and Loops *Ex Parte* Letter at 15, 17-20 (discussing Customer Trouble Report Rate, Digital Loops<DS1/Dispatch) (out of parity in applicable states throughout relevant period); *id.* (discussing Customer Trouble Report Rate, Digital Loops<DS1/Non-Dispatch) (out of parity in Alabama during April and May, in Mississippi during June, in North Carolina during March through May, and in South Carolina during March).

⁹³⁰ During that period, the average trouble report rate for digital loops provided competitive LECs was 1.12% in Alabama, 1.27% in Kentucky, 1.54% in Mississippi, 1.64% in North Carolina, and 1.63% in South Carolina. See BellSouth August 14 *Ex Parte* Letter at 15, 17-20 (discussing Customer Trouble Report Rate, Digital Loops<DS1).

⁹³¹ See BellSouth Georgia/Louisiana Order, 17 FCC Rcd at 9150, para. 230.

⁹³² See BellSouth August 14 OSS and Loops *Ex Parte* Letter at 27, 29-32 (discussing Maintenance Average Duration, Digital Loops<DS1/Non-Dispatch). Specifically, in Alabama, BellSouth's performance for this measure was out of parity in April with an average duration of 5.01 hours for competitive LECs and 2.28 hours for BellSouth's retail operations, and in May with an average duration of 7.03 hours for competitive LECs and 2.55 hours for BellSouth's retail operations. In Mississippi, BellSouth's performance was out of parity in June with an average duration of 5.63 hours for competitive LECs and 2.50 hours for BellSouth's retail operations. In North Carolina, BellSouth's performance was out of parity in June with an average duration of 4.29 hours for competitive LECs and 2.29 hours for BellSouth's retail operations. In South Carolina, BellSouth's performance was out of parity in March with an average duration of 4.87 hours for competitive LECs and 1.99 hours for BellSouth's retail operations, and in June with an average duration of 3.92 hours for competitive LECs and 1.88 hours for BellSouth's retail operations. *Id.*

performance for this measure during the applicable period for competitive LECs was comparable to its performance for its own retail operations.⁹³³ We therefore find that the disparities in maintenance average duration also lack competitive significance. Moreover, contrary to KMC's assertion, BellSouth was consistently in parity, with very few repeat troubles, with regard to its measure for repeat troubles within 30 days of maintenance or repair of digital loops.⁹³⁴

243. *High Capacity Loops.* We find, as did the state commissions,⁹³⁵ that BellSouth's performance with respect to high capacity loops complies with checklist item 4. We reach this conclusion despite the fact that BellSouth's performance with respect to certain performance metrics – including the percentage of missed installation appointments for high capacity loops and the percentage of troubles found within 30 days following installation of a high capacity loop – is out of parity for several recent months.⁹³⁶ As we discuss below, however, this performance does not warrant a finding of checklist noncompliance. As the Commission has stated in the past, isolated cases of performance disparity, especially when the margin of disparity is small, generally will not result in a finding of checklist noncompliance.⁹³⁷

244. First, we recognize that BellSouth's performance with respect to an installation timeliness measure – the missed installation appointments metric – was out of parity for most of the months in Alabama.⁹³⁸ The record shows, however, that BellSouth missed few installation

⁹³³ During the relevant period, BellSouth's maintenance intervals for digital loops averaged 4.76 hours for competitive LECs and 4.25 hours for BellSouth's retail operations in Alabama, 4.52 hours for competitive LECs and 3.78 hours for BellSouth's retail operations in Kentucky, 4.83 hours for competitive LECs and 4.09 hours for BellSouth's retail operations in Mississippi, 3.71 hours for competitive LECs and 3.83 hours for BellSouth's retail operations in North Carolina, and 5.14 hours for competitive LECs and 3.39 hours for BellSouth's retail operations in South Carolina. See BellSouth August 14 OSS and Loops *Ex Parte* Letter at 27, 29-32 (discussing Maintenance Average Duration, Digital Loops<DS1).

⁹³⁴ See KMC Comments at 16. Specifically, the record shows that during the relevant period, competitive LECs reported only 77 repeat troubles for digital loops in the applicable states. BellSouth August 14 OSS and Loops *Ex Parte* Letter at 21, 23-26 (discussing % Repeat Troubles within 30 Days, Digital Loops<DS1).

⁹³⁵ See Alabama Commission Comments at 211; Kentucky Commission Comments at 31, 41; Mississippi Commission Comments at 3; North Carolina Commission Comments at 206; South Carolina Commission Comments at 1.

⁹³⁶ See Alabama/Kentucky/Mississippi/North Carolina/South Carolina B.2.19.19.1.1 (% Provisioning Troubles within 30 Days, Digital Loops≥DS1/<10 Circuits/Dispatch); Alabama/Kentucky/Mississippi/North Carolina/South Carolina B.2.18.19.1.1 (% Missed Installation Appointments, Digital Loops≥DS1/<10 Circuits/Dispatch). Notes 941 and 944, *infra*, provide the relevant data regarding BellSouth's performance under these metrics.

⁹³⁷ See *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9144, para. 619; *Verizon Massachusetts Order*, 16 FCC Rcd at 9055-56, para. 22; *Verizon Pennsylvania Order*, 16 FCC Rcd at 17468-69, para. 90 (finding that even "poor" performance with regard to high capacity loops did not warrant a finding of checklist noncompliance for all loop types where high capacity loops represented only a small percentage of all loops ordered by competitors in a state). Should BellSouth's performance in this area deteriorate, we will pursue appropriate enforcement action.

⁹³⁸ See Alabama B.2.18.19.1.1 (% Missed Installation Appointments, Digital Loops≥DS1/<10 Circuits/Dispatch). BellSouth's data for Alabama show that, from March through June, BellSouth missed 4.62% of its installation appointments for its retail high capacity loop operations and 9.51% of its installation appointments for competitive (continued....)

appointments for either wholesale or retail high capacity loops in Alabama during the applicable period.⁹³⁹ Therefore, a very small increase in the number of missed installation appointments for competitive LEC customers can cause BellSouth to fail to achieve parity for this metric in a given month.⁹⁴⁰ BellSouth's data show that it missed a total of 29 high capacity loop appointments for competitive LECs during the relevant period and that 14 fewer missed installation appointments would have allowed BellSouth to achieve parity with respect to this metric throughout that period.⁹⁴¹ Moreover, we note that BellSouth's performance reflected by an installation timeliness metric – the order completion interval metric for high capacity loops – satisfies the benchmark for all months.⁹⁴² Given this evidence, we do not find that lack of parity on this missed installation appointments metric warrants a finding that BellSouth fails to meet checklist item 4 in Alabama.⁹⁴³

245. Next, in each applicable state, the percentage of troubles reported within 30 days following installation was statistically out of parity during much of the relevant period.⁹⁴⁴ The

(Continued from previous page)

LECs' high capacity loop operations. *Id.* We note that BellSouth was out of parity for this metric for May in Kentucky and North Carolina. Kentucky/North Carolina B.2.1.19.1.1 (Order Completion Interval, Digital Loops \geq DS1/ $<$ 10 Circuits/Dispatch). BellSouth, however, failed to keep only three high capacity loop appointments for May in Kentucky and only one high capacity loop appointment for May in North Carolina. These isolated disparities in performance do not undercut BellSouth's otherwise acceptable level of performance and, thus, do not require a finding of checklist noncompliance. *See, e.g., Verizon Massachusetts Order*, 16 FCC Rcd at 9055-56, para. 122.

⁹³⁹ BellSouth Varner Reply Aff. at para. 226; Alabama B.2.18.19.1.1 (% Missed Installation Appointments, Digital Loops \geq DS1/ $<$ 10 Circuits/Dispatch).

⁹⁴⁰ BellSouth Varner Reply Aff. at para. 226.

⁹⁴¹ BellSouth's data show that of its high capacity loop appointments for competitive LECs in Alabama, it missed a total of eight in March, nine in April, six in May, and six in June. While BellSouth achieved parity for this metric in Alabama during March, four fewer missed appointments during April, five fewer missed appointments during May, and five fewer missed appointments during June would have enabled BellSouth to achieve parity for this metric in Alabama during each relevant month. *See* Alabama B.2.18.19.1.1 (% Missed Installation Appointments, Digital Loops \geq DS1/ $<$ 10 Circuits/Dispatch).

⁹⁴² *See* Alabama/Kentucky/Mississippi/North Carolina/South Carolina B.2.1.19.1.1 (Order Completion Interval, Digital Loops \geq DS1/ $<$ 10 Circuits/Dispatch); *see also* BellSouth August 15 Non-pricing *Ex Parte* Letter at 9-10 (arguing that the need to construct or rearrange facilities serving particular end users caused many of the missed installation appointments for high capacity loops); BellSouth Varner Reply Aff. at para. 226 (stating that BellSouth missed six high capacity loop appointments in March and seven high capacity loop appointments in April because it failed to add needed facilities at a single location prior to the scheduled installation dates).

⁹⁴³ *See SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6344, para. 213.

⁹⁴⁴ Alabama/Kentucky/Mississippi/North Carolina/South Carolina B.2.19.19.1.1 (% Provisioning Troubles within 30 Days, Digital Loops \geq DS1/ $<$ 10 Circuits/Dispatch). In Alabama, competing carriers experienced an average of 12.26% trouble reports within 30 days after installation of a high capacity digital loop, compared to an average of 2.98% for BellSouth retail operations from March through June. *See* Alabama B.2.19.19.1.1 (% Provisioning Troubles within 30 Days, Digital Loops \geq DS1/ $<$ 10 Circuits/Dispatch). Kentucky performance data show that competitive carriers experienced an average of 7.38% trouble reports, compared to an average of 2.28% for BellSouth retail operations for the same period. *See* Kentucky B.2.19.19.1.1 (% Provisioning Troubles within 30 (continued....)

record makes clear, however, that many of the troubles competitive LECs reported during that period were closed without any trouble being found.⁹⁴⁵ Adjusting BellSouth's reported performance data to eliminate these trouble reports would improve the reported results significantly.⁹⁴⁶ In addition, BellSouth has implemented an ongoing program to ensure installation quality for high capacity loops throughout its region.⁹⁴⁷ This program has allowed BellSouth to identify and, in some instances, eliminate the problems that cause installation problems with high capacity loops.⁹⁴⁸ As with digital loops, this program includes an opportunity for the competitive LEC to engage in cooperative testing with BellSouth to ensure that a high capacity loop meets relevant technical criteria prior to its being handed off to the competitive LEC.⁹⁴⁹ BellSouth indicates, however, that, even with cooperative testing, some problems arise cannot be detected until the customer premises equipment is connected to the loop, which typically does not happen until several days after BellSouth hands it off to the competitive LEC.⁹⁵⁰ Given this evidence, and recognizing BellSouth's generally acceptable performance for other categories of loops, we find that BellSouth's performance is in compliance with checklist item 4.

246. We reject KMC's contentions that BellSouth's provisioning and maintenance and repair performance for high capacity loops precludes a finding of checklist compliance.⁹⁵¹ Given (Continued from previous page)

Days, Digital Loops \geq DS1/ $<$ 10 Circuits/Dispatch). In Mississippi, the comparable figures were 16.44% for competitive LECs and 5.92% for BellSouth. See Mississippi B.2.19.19.1.1 (% Provisioning Troubles within 30 Days, Digital Loops \geq DS1/ $<$ 10 Circuits/Dispatch). In North Carolina, they were 12.79% for competitive LECs and 5.00% for BellSouth. See North Carolina B.2.19.19.1.1 (% Provisioning Troubles within 30 Days, Digital Loops \geq DS1/ $<$ 10 Circuits/Dispatch). In South Carolina, they were 12.18% for competitive LECs and 4.15% for BellSouth. South Carolina B.2.19.19.1.1 (% Provisioning Troubles within 30 Days, Digital Loops \geq DS1/ $<$ 10 Circuits/Dispatch). We note that in the *BellSouth Georgia/Louisiana Order*, the Commission considered performance data showing averages for trouble reports within 30 days of 7.87% for competitive LECs and 1.76% for BellSouth's retail operations in Georgia, and 6.93% for competitive LECs and 1.00% for BellSouth retail operations in Louisiana. See *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9152 n.907.

⁹⁴⁵ See BellSouth Varner Reply Aff. at para. 219.

⁹⁴⁶ See *id.*

⁹⁴⁷ BellSouth August 14 OSS and Loops *Ex Parte* Letter at 4; BellSouth Ainsworth Aff. at para. 139; BellSouth Varner Reply Aff. at paras. 217; see also *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9152-53, para. 233. This program also addressed digital loops. See para. 241, *supra*.

⁹⁴⁸ BellSouth August 14 OSS and Loops *Ex Parte* Letter at 4; BellSouth Varner Reply Aff. at paras. 216-18. For instance, to help assure that its technicians test high capacity loops before reporting that installations are complete, BellSouth now requires that the technicians post the test results. BellSouth Varner Reply Aff. at para. 216.

⁹⁴⁹ BellSouth Ainsworth Aff. at para. 139; BellSouth August 14 OSS and Loops *Ex Parte* Letter at 4.

⁹⁵⁰ See BellSouth Varner Reply Aff. at para. 215 (stating that the customer premises equipment adds loop length and resistance to the circuit that may push it beyond viable limits).

⁹⁵¹ KMC Comments at 15-16. KMC also asserts that facilities-based carriers like KMC will have no meaningful opportunity to compete unless the Commission forces BellSouth to improve its high capacity loop performance by denying this application. KMC Comments at 8-9.

BellSouth's generally acceptable performance with regard to other types of loops, and BellSouth's continuing efforts to ensure installation quality for high capacity loops, we cannot conclude that BellSouth's performance with regard to high capacity loops denies competitive LECs a reasonable opportunity to compete.⁹⁵² Contrary to KMC's assertion,⁹⁵³ repeat troubles are not a major problem with respect to high capacity loops. During the relevant four-month period, competitive LECs reported only 283 repeat troubles for high capacity loops, a reporting rate generally in parity with the retail analogue.⁹⁵⁴ Moreover, BellSouth generally maintained parity performance under the missed repair appointment and the mean time to repair measures during the relevant period.⁹⁵⁵ Although one measure of BellSouth's maintenance and repair performance for high capacity loops – the customer trouble report rate – was out of parity for the applicable states throughout much of the relevant period,⁹⁵⁶ the overall trouble report rate for high capacity loops that BellSouth provided competitive LECs was low during the relevant period.⁹⁵⁷ We therefore find that these disparities lack competitive significance,⁹⁵⁸ and that BellSouth's maintenance and repair performance for high capacity loops warrants a finding of checklist compliance.

247. We also reject KMC's argument that BellSouth's performance for the percentage of jeopardy notices for mechanized high capacity loops, which is significantly out of parity throughout the four-month period,⁹⁵⁹ demonstrates that BellSouth assigns high capacity loops in a

⁹⁵² See *Verizon Pennsylvania Order*, 16 FCC Rcd at 17468-69, para. 90.

⁹⁵³ See KMC Comments at 16.

⁹⁵⁴ BellSouth August 14 OSS and Loops *Ex Parte* Letter at 21, 23-26 (discussing % Repeat Troubles within 30 Days, Digital Loops \geq DS1) (parity during the applicable months except with regard to high capacity loop troubles requiring dispatch in Mississippi in April, and high capacity loop troubles not requiring dispatch in South Carolina in April and Mississippi in May).

⁹⁵⁵ See BellSouth August 14 OSS and Loops *Ex Parte* Letter at 9, 11-14 (discussing Missed Repair Appointments, Digital Loops \geq DS1) (parity throughout the applicable states for the relevant period except with regard to high capacity loop maintenance requiring dispatch in North Carolina in May); *id.* at 27-33 (discussing Maintenance Average Duration, Digital Loops \geq DS1) (parity throughout the applicable states for the relevant period except with regard to high capacity loop maintenance requiring dispatch in North Carolina in May).

⁹⁵⁶ See BellSouth August 14 OSS and Loops *Ex Parte* Letter at 15, 17-20 (discussing Customer Trouble Report Rate, Digital Loops \geq DS1/Dispatch) (out of parity in applicable states throughout relevant period); *id.* (discussing Customer Trouble Report Rate, Digital Loops \geq DS1/Non-Dispatch) (out of parity in Alabama, Mississippi, North Carolina, and South Carolina throughout relevant period and in Kentucky from April through June).

⁹⁵⁷ During that period, the average trouble report rate for high capacity loops was 3.19% in Alabama, 4.04% in Kentucky, 7.82% in Mississippi, 3.84% in North Carolina, and 4.22% in South Carolina. See *id.* (Customer Trouble Report Rate, Digital Loops \geq DS1).

⁹⁵⁸ See *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9150, para. 230.

⁹⁵⁹ Alabama/Kentucky/Mississippi/North Carolina/South Carolina Metric B.2.5.19 (% Jeopardies, Digital Loops \geq DS1, Mechanized). BellSouth's monthly performance data for this metric range from 3.93% to 35.87% during the four-month period; for competitive LECs, the percentages range from 60.87% to 93.22%.

discriminatory manner.⁹⁶⁰ This difference in the jeopardy rates simply reflects differences between the types and locations of facilities reflected in this metric. Because virtually all of the high capacity loops ordered by competitive LECs terminate at an end user's premises, it is likely that a temporary facilities shortage would place a competitive LEC's order in jeopardy.⁹⁶¹ In contrast, a significant percentage of the high capacity circuits included in the retail analogue for this metric carry traffic between BellSouth central offices, where temporary facility shortages are significantly less likely.⁹⁶² We therefore give this performance data minimal weight with respect to whether BellSouth's loop assignment practices are nondiscriminatory.⁹⁶³

248. *Line Sharing.* We find, as did the state commissions,⁹⁶⁴ that BellSouth offers nondiscriminatory access to the high frequency portion of the loop in each applicable state.⁹⁶⁵ We note that competitive LECs in Mississippi and South Carolina have not yet ordered any line-sharing arrangements from BellSouth.⁹⁶⁶ Because order volumes for line-shared loops are low in each of the states, we look to BellSouth's line-sharing performance in Georgia to inform our analysis.⁹⁶⁷ We further note that no party has alleged that BellSouth's line-sharing offerings in

⁹⁶⁰ KMC Comments at 11. We note that KMC makes no claim that BellSouth provides jeopardy notices for high capacity loops in a discriminatory manner. *See id.*

⁹⁶¹ BellSouth Varner Reply Aff. at para. 127.

⁹⁶² *Id.*

⁹⁶³ We note that BellSouth's systems and procedures are designed to ensure that high capacity loops are assigned on a nondiscriminatory basis. BellSouth Milner Reply Aff. at para. 10. Specifically, BellSouth shows that it uses a mechanized system, LFACS, to assign high capacity loops, among other facilities, on a "first come, first served" basis to its wholesale and retail customers. If LFACS cannot find a suitable facility, the service order is referred to BellSouth's Address and Facilities Inventory Group (AFIG) or its Service Advocate Center (SAC). These groups assign high capacity loops and other facilities in the order in which BellSouth originally received the service orders. *Id.* We also note that BellSouth's data make clear that it provides jeopardy notices to competitive LECs significantly in advance of scheduled installation dates. *See Alabama/Kentucky/Mississippi/North Carolina/South Carolina B.2.8.19 (Average Jeopardy Notice Interval, Digital Loops≥DS1, Mechanized)* (showing compliance with benchmark requiring that jeopardy notices be provided at least 48 hours prior to scheduled installation). We therefore reject KMC's argument that competitive LECs do not receive adequate notice that the change in service providers will not take place as scheduled. KMC Comments at 14.

⁹⁶⁴ *See Alabama Commission Comments at 211; Kentucky Commission Comments at 32-33; Mississippi Commission Comments at 3; North Carolina Commission Comments at 200; South Carolina Commission Comments at 1.*

⁹⁶⁵ As discussed in note 61, *supra*, the D.C. Circuit recently stated that "the *Line Sharing Order* must be vacated and remanded." *USTA v. FCC*, 290 F.3d 415, 429. The court also stated that it "grant[ed] the petitions for review[] and remand[ed] the *Line Sharing Order* . . . to the Commission for further consideration in accordance with the principles outlined." *Id.* at 430. We are addressing the line sharing rules as part of our *Triennial Review Proceeding*. *See Triennial Review Notice*, 16 FCC Rcd at 22805, paras. 53-54.

⁹⁶⁶ BellSouth Milner Aff. at para. 114.

⁹⁶⁷ *See para. 233, supra.*

Mississippi and South Carolina fail to provide nondiscriminatory access to the high frequency portion of the loop.

249. BellSouth has generally met the benchmark and parity standards for installation timeliness,⁹⁶⁸ installation quality,⁹⁶⁹ and maintenance and repair quality for line sharing in the other relevant states.⁹⁷⁰ Because BellSouth's performance data show that it installs line-sharing arrangements in accordance with the standards approved by the state commissions,⁹⁷¹ we reject Covad's reliance on BellSouth's alleged failure to provision line-sharing arrangements within the time frame specified in its interconnection agreement with Covad.⁹⁷² Given that BellSouth's

⁹⁶⁸ See Alabama/Kentucky/North Carolina B.1.9.7-B.1.13.7 (Firm Order Confirmation, Line Sharing); Alabama/Kentucky/North Carolina B.2.1.7.3.1-B.2.7.5.2 (Order Completion Interval, Line Sharing); *see also* Georgia B.2.1.7.3.1-B.2.1.7.5.2 (Order Completion Interval, Line Sharing); Georgia B.2.1.7.3.1-B.2.1.7.5.2 (Order Completion Interval, Line Sharing); Alabama/Kentucky/North Carolina/Georgia B.2.18.7.1.1-B.2.18.7.2.2 (% Missed Installation Appointments, Line Sharing).

⁹⁶⁹ See Alabama/Kentucky/North Carolina/Georgia B.2.19.7.1.2-B.2.19.7.2.1 (% Provisioning Troubles within 30 Days, Line Sharing); Alabama/Kentucky/North Carolina/Georgia B.3.2.7.1-B.3.2.7.2 (Customer Trouble Report Rate, Line Sharing).

⁹⁷⁰ See Alabama/Kentucky/North Carolina/Georgia B.3.1.7.1-B.3.1.7.2 (% Missed Repair Appointments, Line Sharing); Alabama/Kentucky/North Carolina/Georgia B.3.3.7.1-B.3.3.7.2 (Maintenance Average Duration, Line Sharing); Alabama/Kentucky/North Carolina/Georgia B.3.4.7.1-B.3.4.7.2 (% Repeat Troubles within 30 Days, Line Sharing). While Covad complains that BellSouth took longer to perform line-sharing maintenance for competitive LECs than for its own retail operations, BellSouth's performance under the metrics for maintenance average duration is generally in parity, with very low volumes, in Alabama, Kentucky, and North Carolina from March through June. Covad Comments at 29-30; *see* Alabama B.3.3.7.1-B.3.3.7.2 (Maintenance Average Duration, Line Sharing) (parity in all four months for both dispatch and non-dispatch); Kentucky B.3.3.7.1-B.3.3.7.2 (Maintenance Average Duration, Line Sharing) (parity in all four months for both dispatch and in three months for non-dispatch); North Carolina B.3.3.7.1-B.3.3.7.2 (Maintenance Average Duration, Line Sharing) (parity in all four months for both dispatch and non-dispatch).

⁹⁷¹ See Alabama/Kentucky/North Carolina B.2.1.7.3.1-B.2.1.7.3.2 (Order Completion Interval, Line Sharing/<6 Circuits). We note that BellSouth's order completion interval performance was out of parity during June in Alabama, Kentucky, and North Carolina, and during much of the relevant period in Georgia. *See* Alabama/Kentucky/North Carolina B.2.1.7.3.2 (Order Completion Interval, Line Sharing/<6 Circuits/Non-Dispatch) (average June intervals of 4.00 for competitive LECs and 2.43 days for BellSouth's retail operations in Alabama, 3.85 days for competitive LECs and 2.46 days for BellSouth's retail operations in Kentucky, and 3.63 days for competitive LECs and 2.39 days for BellSouth's retail operations in North Carolina); Georgia B.2.1.7.3.1-B.2.1.7.5.2 (Order Completion Interval, Line Sharing) (average monthly intervals ranging from 3.88 days to 5.96 days for competitive LECs and 2.39 days to 4.07 days for BellSouth's retail operations). The data indicate, however, that, on average during the applicable period, BellSouth's order completion intervals were 0.49 days shorter in Alabama, 0.46 days longer in Kentucky, 0.15 days shorter in North Carolina, and 0.66 days longer in Georgia for competitive LECs than for BellSouth's retail operations. Alabama/Kentucky/North Carolina/Georgia B.2.1.7.3.1-B.2.1.7.3.2 (Order Completion Interval, Line Sharing/<6 Circuits). We find these differences to be competitively insignificant.

⁹⁷² See Covad Comments at 22-23, 27 (asserting that BellSouth's failure to provision line-sharing arrangements within the three-day time frame specified in the interconnection agreement adversely affects Covad's ability to serve its customers with the speed and efficiency they expect).

line-sharing provisioning intervals for its retail customers and competitive LECs are comparable, and recognizing BellSouth's timeliness performance during the relevant period in Georgia, we find that BellSouth's installation performance does not warrant a finding of checklist noncompliance.⁹⁷³ We do not, however, exclude the possibility that Covad might prevail in the event it chose to pursue this as a dispute under its agreement with BellSouth.

250. We also reject Covad's claim that BellSouth's line-sharing provisioning and maintenance and repair performance precludes a grant of long distance authority.⁹⁷⁴ Although BellSouth's performance with regard to certain measures – customer trouble reports within 30 days of installation and repeat trouble reports within 30 days of maintenance or repair – is out of parity in certain months,⁹⁷⁵ we find these disparities in reported performance do not warrant a finding of checklist noncompliance. First, as BellSouth argues, certain disparities reflect only a few trouble reports.⁹⁷⁶ Second, because only a small percentage of the line-sharing arrangements provided by BellSouth resulted in initial trouble reports, the total volume of repeat troubles is too

⁹⁷³ We note that Covad provides no data regarding the provisioning intervals for the line-shared loops it obtains from BellSouth. See Covad Comments at 27 (alleging line-sharing provisioning intervals of 3.88 days in Alabama, 4.07 days in Kentucky, and 3.78 days in North Carolina). In any event, this proceeding is not the proper forum for redressing any interconnection agreement violations by BellSouth. Covad may seek enforcement of its interconnection agreement by the state commissions.

⁹⁷⁴ Covad Comments at 27-29.

⁹⁷⁵ Alabama B.2.19.7.1.2 (% Provisioning Troubles within 30 days, Line Sharing/<10 Circuits/Non-Dispatch) (out of parity during three months with an average trouble rate of 8.43% for competitive LECs and 1.95% for BellSouth's retail operations); North Carolina B.2.19.7.1.2 (% Provisioning Troubles within 30 days, Line Sharing/<10 Circuits/Non-Dispatch) (out of parity throughout relevant period with an average trouble rate of 20.62% for competitive LECs and 2.38% for BellSouth's retail operations); Georgia B.2.19.7.1.1-B.2.19.7.1.2 (% Provisioning Troubles within 30 days, Line Sharing/<10 Circuits) (out of parity throughout relevant period with trouble rates ranging from 11.30% to 39.42% for competitive LECs and from 2.06% to 5.27% for BellSouth); North Carolina B.3.4.7.2 (% Repeat Troubles within 30 Days, Line Sharing/Non-Dispatch) (out of parity in April and June with overall repeat trouble rates of 36.00% for competitive LECs and 22.19% for BellSouth's retail operations during March through June); Georgia B.3.4.7.1 (% Repeat Troubles within 30 Days, Line Sharing/Dispatch) (out of parity in March, May, and June with overall repeat trouble rates of 47.22% for competitive LECs and 26.94% for BellSouth's retail operations during March through June); Georgia B.3.4.7.2 (% Repeat Troubles within 30 Days, Line Sharing/Non-Dispatch) (out of parity in June with overall repeat trouble rates of 29.91% for competitive LECs and 26.04% for BellSouth's retail operations during March through June).

⁹⁷⁶ BellSouth Varner Reply Aff. at para. 121 (*citing confidential data*); *id.* at para. 227; Letter from Kathleen B. Levitz, Vice President – Federal Regulatory, BellSouth, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-150 (filed Sept. 6, 2002) (BellSouth September 6 *Ex Parte* Letter); Alabama B.2.19.7.1.1 (% Provisioning Troubles within 30 days, Line Sharing/<10 Circuits/Dispatch) (out of parity during March and April with monthly volumes of seven for competitive LECs); North Carolina B.2.19.7.1.1 (% Provisioning Troubles within 30 days, Line Sharing/<10 Circuits/Dispatch) (out of parity during March with volume of five for competitive LECs); Kentucky B.2.19.7.1.2 (% Provisioning Troubles within 30 days, Line Sharing/<10 Circuits/Non-Dispatch) (out of parity during April, May, and June with respective monthly volumes of three, four, and three for competitive LECs).

small to yield statistically significant results.⁹⁷⁷ BellSouth generally performed at or above parity with regard to line-sharing maintenance, as measured by its trouble report rate for line-sharing arrangements, during the relevant period.⁹⁷⁸ In these circumstances, we conclude that BellSouth's customer trouble report and repeat trouble report rates for line sharing do not support a finding of checklist noncompliance.

251. *Line Splitting.* We find that BellSouth also provides nondiscriminatory access to line splitting in accordance with our rules.⁹⁷⁹ BellSouth states that it facilitates line splitting by cross connecting an unbundled loop to a competitive LEC's collocation space. Moreover, BellSouth implemented permanent OSS for line splitting on January 5, 2002, and competitive LECs have raised no complaints about this process.⁹⁸⁰

⁹⁷⁷ Kentucky B.3.2.7.2 (% Repeat Troubles within 30 Days, Line Sharing/Dispatch) (out of parity in May with two repeat troubles); North Carolina B.3.4.7.2 (% Repeat Troubles within 30 Days, Line Sharing/Non-Dispatch) (out of parity in April with four repeat troubles and in June with three repeat troubles); Georgia B.3.4.7.1 (% Repeat Troubles within 30 Days, Line Sharing/Dispatch) (out of parity in four months with repeat trouble counts ranging from three to 16).

⁹⁷⁸ See, e.g., Alabama B.3.2.7.1 (Customer Trouble Report Rate, Line Sharing/Dispatch) (overall trouble report rates of 20.00% for competitive LECs and 50.57% for BellSouth for dispatch orders); Alabama B.3.2.7.2 (Customer Trouble Report Rate, Line Sharing/Non-Dispatch) (overall trouble report rates of 3.70% for competitive LECs and 3.49% for BellSouth for non-dispatch orders); Kentucky B.3.2.7.1 (Customer Trouble Report Rate, Line Sharing/Dispatch) (overall trouble report rates of 0.32% for competitive LECs and 1.24% for BellSouth for dispatch orders); Kentucky B.3.2.7.2 (Customer Trouble Report Rate, Line Sharing/Non-Dispatch) (overall trouble report rates of 1.41% for competitive LECs and 2.03% for BellSouth for non-dispatch orders); North Carolina B.3.2.7.1 (Customer Trouble Report Rate, Line Sharing/Dispatch) (overall trouble report rates of 0.18% for competitive LECs and 0.81% for BellSouth for dispatch orders); North Carolina B.3.2.7.2 (Customer Trouble Report Rate, Line Sharing/Non-Dispatch) (overall trouble report rates of 1.32% for competitive LECs and 1.61% for BellSouth for non-dispatch orders); Georgia B.3.2.7.1 (Customer Trouble Report Rate, Line Sharing/Dispatch) (overall trouble report rates of 0.78% for competitive LECs and 1.17% for BellSouth for dispatch orders); Georgia B.3.2.7.2 (Customer Trouble Report Rate, Line Sharing/Non-Dispatch) (overall trouble report rates of 2.58% for competitive LECs and 2.85% for BellSouth for non-dispatch orders).

⁹⁷⁹ See *Line Sharing Reconsideration Order*, 16 FCC Rcd at 2111, para. 20 n.36.

⁹⁸⁰ See *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9157, para. 243.

C. Checklist Item 5 – Unbundled Transport

252. Section 271(c)(2)(B)(v) of the competitive checklist requires a BOC to provide “[l]ocal transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services.”⁹⁸¹ Based on the evidence in the record, we conclude, as did the state commissions,⁹⁸² that BellSouth complies with the requirements of checklist item 5.⁹⁸³

253. The Commission has previously relied on the missed installation appointment rate to determine whether a BOC is provisioning transport to its competitors in a nondiscriminatory manner.⁹⁸⁴ Despite the low transport order volume for competitive LECs in each of the five states, BellSouth’s performance data show that it missed installation appointments for provisioning transport at a lower rate for its competitors than for its own retail customers during the relevant period.⁹⁸⁵ Given this evidence, and recognizing BellSouth’s parity performance in Georgia, we conclude that BellSouth’s provisioning of transport to competitive LECs is nondiscriminatory.⁹⁸⁶

254. We note that US LEC alleges that the current rules regarding loop-transport combinations, EELs, have impeded US LEC’s ability to compete with BellSouth in violation of checklist item 5.⁹⁸⁷ New South also claims that BellSouth does not comply with the Commission’s orders regarding EELs audits and contends that it has experienced delays in the conversion of special access circuits to EELs.⁹⁸⁸ We address these claims in our discussion of checklist item 2, above.⁹⁸⁹

⁹⁸¹ 47 U.S.C. § 271(c)(2)(B)(v).

⁹⁸² Alabama Commission Comments at 213-15; Mississippi Commission Comments at 3; Kentucky Commission Comments at 33; North Carolina Commission Comments at 209; South Carolina Commission Comments at 1.

⁹⁸³ BellSouth Application at 117-18; BellSouth Milner Aff. at paras. 137-45.

⁹⁸⁴ See, e.g., *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9158, para. 246; *Verizon Massachusetts Order*, 16 FCC Rcd at 9106-07, para. 210.

⁹⁸⁵ See B.2.18.2.1.1 (% Missed Installation Appointments, Local Interoffice Transport/<10 Circuits/Dispatch). We note that, during the months with reported competitive LEC data, BellSouth achieved parity in Alabama (June), Kentucky (April, May, and June), Mississippi (April, May, and June), and North Carolina (March, April, May, and June). See Alabama/Kentucky/Mississippi/North Carolina B.2.18.2.1.1 (% Missed Installation Appointments, Local Interoffice Transport/<10 Circuits/Dispatch).

⁹⁸⁶ Because order volumes for transport were nonexistent or low in the five states during the relevant period, we look to Georgia data to inform our analysis. See Georgia B.2.18.2.1.1 (% Missed Installation Appointments, Local Interoffice Transport/<10 Circuits/Dispatch).

⁹⁸⁷ US LEC Comments at 7-19; US LEC Reply at 4-5.

⁹⁸⁸ New South August 5 *Ex Parte* Letter at 6.

⁹⁸⁹ See section IV.B.3, *supra*.

D. Checklist Item 8 – White Pages Directory Listings

255. Section 271(c)(2)(B)(viii) of the competitive checklist requires a BOC to provide “[w]hite page directory listings for customers of the other carrier’s telephone exchange service.”⁹⁹⁰ Based on the record in this proceeding, we conclude, as did the state commissions,⁹⁹¹ that BellSouth satisfies the requirements of checklist item 8.⁹⁹²

256. We note that Birch alleges that competitive LECs were not properly notified of a change to BAPCO’s systems to fix a partial directory listing deficiency, which resulted in telephone numbers of Birch’s end users being omitted from BAPCO’s telephone book.⁹⁹³ This issue is addressed in the change management discussion in checklist item 2, above.⁹⁹⁴

E. Checklist Item 10 – Databases and Associated Signaling

257. Section 271(c)(2)(B)(x) of the competitive checklist requires a BOC to provide “nondiscriminatory access to databases and associated signaling necessary for call routing and completion.”⁹⁹⁵ Based on the evidence in the record, we conclude that BellSouth satisfies the requirements of checklist item 10.

258. US LEC contends that BellSouth’s Signaling System 7 (SS7) tariff revisions in Mississippi and North Carolina are discriminatory. US LEC alleges, for example, that these tariff revisions impose per-message charges on every call regardless of whether the call

⁹⁹⁰ 47 U.S.C. § 271(c)(2)(B)(viii). Section 251(b)(3) of the 1996 Act obligates all LECs to permit competitive providers of telephone exchange service and telephone toll service to have nondiscriminatory access to directory listings. 47 U.S.C. § 251(b)(3).

⁹⁹¹ Alabama Commission Comments at 228; Kentucky Commission Comments at 35; Mississippi Commission Comments at 3; North Carolina Commission Comments at 227; South Carolina Commission Comments at 1.

⁹⁹² BellSouth states that it offers white page listings to competitive LECs at no extra charge, integrates their listings with the listings for BellSouth’s own retail customers, publishes the entries in the same font and character size, uses the same procedures to process listings, and provides the same accuracy and reliability. BellSouth Application at 122; BellSouth Milner Aff. at para. 205 & Exh. WKN-14.

⁹⁹³ Birch Comments at 20-25. We also note that AT&T questions the reliability of BellSouth’s percent update accuracy metric, which measures whether BellSouth accurately updates its directory listing database, because BellSouth, contrary to its own business rules, excludes “Directory Listing only” service orders from the samples drawn. AT&T Bursh/Norris Decl. at paras. 51-52; *see also* Alabama/Kentucky/Mississippi/North Carolina/South Carolina F.13.2 (% Update Accuracy). In response, BellSouth states that these orders have always been excluded based on its understanding of the Commission’s requirements implementing the SQM. BellSouth Varner Reply Aff. at para. 47. BellSouth further adds that it advised AT&T that it would include the less complex orders in the measure, which may slightly improve the accuracy. *Id.* Thus, we do not find that AT&T’s reliability claim rises to the level of checklist noncompliance.

⁹⁹⁴ *See* section IV.B.2.g, *supra*.

⁹⁹⁵ 47 U.S.C. § 271(c)(2)(B)(x).

originates on BellSouth's network or on a competitive LEC's network.⁹⁹⁶ We reject US LEC's claims, as did the state commissions.⁹⁹⁷

259. BellSouth asserts, and we agree, that the issues raised by US LEC pertain to the manner in which competitive LECs obtain service under intrastate access tariffs and are not relevant to the question of whether BellSouth provides nondiscriminatory access to databases and signaling for compliance with checklist item 10.⁹⁹⁸ BellSouth also states that "[r]ates, terms[,] and conditions for a CLEC's use of BellSouth's CCS7 service in relation to local calls is governed by the CLEC's (e.g., US LEC) approved interconnection agreement with BellSouth."⁹⁹⁹ Because US LEC limits its allegations to purported tariff revisions and makes no allegations concerning discriminatory SS7 charges in any interconnection agreement with BellSouth, we do not find that US LEC's allegations, even if true, state a violation of checklist item 10.¹⁰⁰⁰ US LEC's specific concerns regarding the intrastate access tariffs revisions are more appropriately addressed by the state commissions using established procedures to challenge and review tariff filings.¹⁰⁰¹

260. BellSouth provides persuasive evidence that it provides access to its signaling networks in a nondiscriminatory manner.¹⁰⁰² We therefore find that BellSouth complies with checklist item 10.

F. Checklist Item 11 – Number Portability

261. Section 271(c)(2)(B)(xi) of the Act requires a BOC to comply with the number portability regulations adopted by the Commission pursuant to section 251.¹⁰⁰³ Section 251(b)(2)

⁹⁹⁶ US LEC Comments at 3-4.

⁹⁹⁷ Alabama Commission Comments at 231; Kentucky Commission Comments at 37; Mississippi Commission Comments at 3; North Carolina Commission Comments at 233; South Carolina Commission Comments at 1.

⁹⁹⁸ BellSouth Ruscilli/Cox Reply Aff. at para. 45; *see also* BellSouth Reply at 35 & n.8 (citing *Bell Atlantic New York Order* 15 FCC Rcd at 4126, para. 340 ("We do not believe that checklist compliance is intended to encompass the provision of tariffed interstate access services simply because these services use some of the same physical facilities as a checklist item.")).

⁹⁹⁹ BellSouth Ruscilli/Cox Reply Aff. at para. 45.

¹⁰⁰⁰ US LEC Comments at 2-7. As long as BellSouth offers signaling pursuant to a state-approved interconnection agreement, section 252(i) of the Act makes such terms and conditions available to all requesting carriers, thus satisfying BellSouth's obligation pursuant to checklist item 10. *See SWBT Texas Order*, 15 FCC Rcd at 18390, para. 78 & n.175. Whether signaling is also available under a BellSouth tariff is not relevant to checklist compliance.

¹⁰⁰¹ BellSouth notes that the Mississippi Commission approved the intrastate access tariff revisions while the tariff filings in North Carolina are pending review by the North Carolina Commission. BellSouth Ruscilli/Cox Reply Aff. at para. 46.

¹⁰⁰² BellSouth Milner Aff. at paras. 217-22.

¹⁰⁰³ 47 U.S.C. § 271(c)(2)(B)(xi).

requires all LECs "to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission."¹⁰⁰⁴ Based on the evidence in the record, we find, as did the state commissions,¹⁰⁰⁵ that BellSouth complies with the requirements of checklist item 11.

262. US LEC raises issues concerning BellSouth's compliance with its number portability obligations, none of which demonstrates that BellSouth fails to comply with the requirements of checklist item 11. For example, US LEC states that when a customer ports fewer than all of its lines from BellSouth, BellSouth will continue to bill that customer for the lines it has ported from BellSouth, thus causing the customer to be double billed for those lines.¹⁰⁰⁶ US LEC claims that this problem occurs most frequently when a customer retains BellSouth's alarm monitoring service.¹⁰⁰⁷ BellSouth explains that it has worked with state collaboratives to investigate and resolve any double billing problem attributable to BellSouth.¹⁰⁰⁸ While we do not discount the potential inconvenience that competitive LECs and customers experience as a result of BellSouth's erroneous billing, we find that BellSouth has demonstrated that it has put sufficient processes in place to address double billing disputes. Moreover, we agree with the Alabama and North Carolina Commissions that evidence of duplicate billing does not rise to the level of noncompliance.¹⁰⁰⁹ Further, although not decisional to our analysis, BellSouth states that it now has the capability to convert a customer from BellSouth to a competitive LEC using a single service order which minimizes the risk that the order to discontinue billing the end user will be delayed, and the customer mistakenly billed by BellSouth after the customer has migrated to a competitive LEC.¹⁰¹⁰ Accordingly, we do not find that this claim warrants a finding of checklist noncompliance. Should BellSouth's performance in this area deteriorate, we will pursue appropriate enforcement action.

263. We also reject US LEC's claim that BellSouth fails checklist item 11 because BellSouth frequently ports telephone numbers prior to the facility change due date, an error that often results in competitive LEC customers losing telephone service.¹⁰¹¹ As a result, US LEC must wait until BellSouth achieves its facility due date before entering the LSR.¹⁰¹² According to

¹⁰⁰⁴ 47 U.S.C. § 251(b)(2).

¹⁰⁰⁵ Alabama Commission Comments at 238; Kentucky Commission Comments at 38; Mississippi Commission Comments at 3; North Carolina Commission Comments at 240; South Carolina Commission Comments at 1.

¹⁰⁰⁶ US LEC Comments at 20.

¹⁰⁰⁷ *Id.*

¹⁰⁰⁸ BellSouth Scollard Aff. at para. 24.

¹⁰⁰⁹ Alabama Commission Comments at 231-39; North Carolina Commission Comments at 233-40.

¹⁰¹⁰ BellSouth Scollard Aff. at para. 24. All of the states in the BellSouth region have the new Single "C" ordering process which should minimize the risk of double billing. *Id.*

¹⁰¹¹ US LEC Comments at 21.

¹⁰¹² *Id.*

US LEC, the facility might sit idle for some period of time unused by the customer and paid for by US LEC.¹⁰¹³ US LEC also contends that, in a number of instances, despite timely notification that a customer has postponed its loop cutover request, BellSouth will disconnect the line prematurely, resulting in a loss of service.¹⁰¹⁴ BellSouth, however, states that for the vast majority of its orders, the Local Number Portability (LNP) Gateway System automatically issues a trigger order with a zero due date, which does not require manual intervention, and meets or exceeds any national standards for number portability.¹⁰¹⁵ For instance, BellSouth states that 92 percent of all LNP gateway orders were processed mechanically in June 2002.¹⁰¹⁶ BellSouth also adds that the LNP Gateway System will directly transmit the remaining complex LSR orders, which require manual intervention, to specific BellSouth representatives for the issuance of the trigger order.¹⁰¹⁷ Given BellSouth's evidence of its compliance and the relatively small number of occurrences cited by BellSouth, we conclude that US LEC's allegations, even if true, do not indicate a systemic failure in BellSouth's provision of number portability and, therefore, do not undermine our overall finding of BellSouth's compliance with checklist item 11.¹⁰¹⁸ Should BellSouth's performance in this area deteriorate, we will pursue appropriate enforcement action.

264. Finally, US LEC challenges BellSouth's practice of requiring US LEC to pay new hourly surcharges for any coordinated LNP cuts that occur between 5:00 PM and 8:00 AM,¹⁰¹⁹ a practice that is said not to appear on any interconnection agreement and that US LEC deems unlawful.¹⁰²⁰ BellSouth explains that the charges to which US LEC refers are for Project Management Coordination service for "after hours cuts," or provisioning of LNP cuts outside the normal 8:00 AM to 5:00 PM workday.¹⁰²¹ The charges cover the labor costs that BellSouth

¹⁰¹³ *Id.*

¹⁰¹⁴ *Id.* at 20-21.

¹⁰¹⁵ BellSouth Milner Reply Aff. at para. 20.

¹⁰¹⁶ BellSouth August 14 OSS and Loops *Ex Parte* Letter.

¹⁰¹⁷ BellSouth Milner Reply Aff. at para. 20. For complex orders, the LNP gateway transmits the LSR to BellSouth's Local Carrier Service Center to issue the trigger order. *Id.*

¹⁰¹⁸ AT&T also raises several data reliability issues with respect to LNP orders, none of which rise to the level of checklist noncompliance. AT&T Bursh/Norris Decl. at paras. 26-38, 42, 46; AT&T Bursh/Norris Reply Decl. at paras. 10-22; AT&T August 23 OSS and Data Integrity *Ex Parte* Letter at 6. BellSouth acknowledges, for instance, 665 of the issued service orders in the March 2002 LNP LSR flow-through report should have been classified as "fully mechanized" instead of "partially mechanized" in the March LNP FOC timeliness raw data. BellSouth Varner Reply Aff. at paras. 34-35. BellSouth, however, notes that steps have been taken to remedy this and other LNP processing errors and each of AT&T's issues has either been resolved or the required fix is scheduled. *Id.* at 35-37, 43-45; BellSouth August 30 *Ex Parte* Letter at 4. Given that BellSouth has responded to AT&T's claims, implemented changes, and no other commenter raised the same issues, we find that BellSouth complies with this checklist item.

¹⁰¹⁹ US LEC Comments at 21.

¹⁰²⁰ *Id.* at 22.

¹⁰²¹ BellSouth Ruscilli/Cox Aff. at para. 42.